THE CONVEYANCER
AND
PROPERTY LAWYER

VOL. 24, No. 6 NOVEMBER—DECEMBER, 1960

CONVEYANCER'S NOTEBOOK

PRICE OF LAND

So much has been written and said about the price of land in recent months that the truth has become considerably obscured. For so long have tenants in rent-controlled dwellings become accustomed to subsidies that any rise in rent is apt to lead to the allegation that all landlords are battening like vultures on the defenceless poor, pushing down the standard of living of the lower income groups below subsistence level. Solicitors meeting tenants in the morning and landlords in the afternoon are well aware that the proportion of villains is about the same in each group. The Rent Acts of recent years have operated after the fashion of a lottery: hardship and good fortune have not been distributed on merit. In the July issue of the *Journal of Planning and Property Law* Dr. D. R. Denman made a careful and disinterested examination of the cost of land and showed that the cost of building sites per foot frontage in 1959 was less than three and a half times the 1939 cost, although the cost per acre was nearly eight times the 1939 cost. It is clear that this marked difference is due to the intensification of density, but Dr. Denman doubts whether planning is really the cause of this. A subsequent article in *The Times* expressed the view that the rise in the price of land was not out of line with the rise in other prices and suggested that rents of dwelling-houses were by no means unduly high.

In the last four years the number of home-owners has risen in a most spectacular fashion and it seems probable that this is due to a steadily rising standard of living. It is not for this journal to take political sides on the housing policy of the country, but it is suggested that if rents are too high in particular cases subsidies should come from public funds and not private individuals. If the economic rent of a flat is £200 per annum and the tenant can only afford £150

why should not the local authority pay the £200 and charge the occupier only £150? This is certainly less cumbersome than threatening to requisition the whole block and we know that this remedy has been successfully applied in a number of cases. It would be a retrograde step to recontrol any dwellings now decontrolled.

Sales of Flats

Defective leases

Some of the difficulties arising out of the sales of flats and maisonettes are beginning to show in a rather marked fashion. One of the crudest ways of selling is to grant an ordinary long lease, the lessee undertaking to repair and the lessor undertaking nothing. Almost any solicitor with such a lease of a flat or maisonette before him would advise his client not to proceed, but clients do not always accept advice and sometimes they insist on purchasing. After a few years they come to sell. When the prospective purchaser applies for a loan to a building society he may well be met with the objection that the lease backs the following rights:

(i) The rights of protection from the upper part.
(ii) The right to enter adjoining flats to carry out repairs, etc.
(iii) The right to force the upper or lower flat to repair it when necessary for the protection of the other.
(iv) The right to compel contribution in respect of the cost of repairs to the common parts or structure which are for the benefit of another flat as well as the lessee's.

In extreme cases these objections are well-nigh fatal and the flat becomes unmarketable at anything like its proper value. There are, however, in most cases three possible solutions: (i) a modification of the lease; (ii) a deed of mutual covenant between the flat-owners concerned; and (iii) an indemnity policy. It is usually only a question of patience to find an acceptable solution, but in most cases the last solution proves the most expeditious and least troublesome.

Water problems

The Institution of Water Engineers has been making an examination of the water problems arising as a result of the separate ownership of the different flats or other units in a block. The statutory requirements of water undertakings are invariably that units in separate ownership must have their own supply pipe and storage system. Water supply to flats in a block can give rise to problems

of noise, pressure, frost precaution, accessibility and control. Most of these are really matters for surveyors, but practitioners would be well advised to draw the attention of surveyors specifically to the question of water supply and drainage. If a cistern is situate within the limits of the flat itself the head of water is often not sufficient. In a new building the difficulty can be overcome by siting the cistern at the side of the building above the level of the flat. Although the Institution seem to regard the siting of the cistern at roof level as tending to lead to considerable complications, nevertheless this would, in practice, seem to be the most satisfactory method though naturally if the building is of considerable height this might prove quite impracticable.

Insurance

Quite often there is no great need to define the precise upper and lower limits of the flat, for where the landlord is responsible for the whole of the structure the matter is largely of academic interest. Nevertheless, if flat-owners may select their own insurance companies difficulties may well arise in the event of damage by fire and otherwise, for the different insurance companies will certainly wish to know the exact limits of their own liability. It appears to be very difficult to ascertain from surveyors the precise point where one flat should end and another begin and to a certain extent this must depend upon the method of construction. In most cases so long as the point is made clear it is not of great importance, but we gather that most surveyors take the view that the top of the flat should end with the upper side of the ceiling and the whole of the floor and joists of the flat above should be treated as part of that flat.

Landlord and Tenant Act, 1954

On the whole the Landlord and Tenant Act, 1954, seems to have worked very well, but we know that there are some moves on foot to procure certain amendments. There are two particular outstanding difficulties. First, where part of business premises is sub-let and the head-landlord serves a notice on his immediate lessee but not on the sub-lessee the head-lessee is in considerable difficulty. He cannot serve a notice himself until he gets a new lease and thus there may be a considerable time-lag between the date on which his new lease and his new rent become operative, and that on which the under-lessee's do. In practice under-lessees usually agree to their new rent taking effect on the same date as that under the head-lease, but if they are not prepared to co-operate to this extent the

head-lessee has no completely effective remedy. What he should do is to try to persuade the head-lessor, when he has served his notice on the lessee, to serve a notice on the under-lessee as well so that the new head-lease and new under-lease can be made to coincide.

The other blemish arises from the decision in *Re No. 88 High Road, Kilburn* [1959] 1 W.L.R. 279. When the court grants a new lease it begins at the end of the current tenancy which is three months from the date on which the application is finally disposed of: see section 64 (1). With respect, that can never have been the intention of the legislature, for in an application to the court the tenant has to specify the term for which he is applying and it seems absurd that he should ask for a term from some problematical date in the future depending on all sorts of matters over which he may have no control. In the county court the problem is not nearly so serious, for hearings are fixed to come on fairly quickly and these applications are disposed of without undue delay, but in the High Court it may be quite a time between the issue of the originating summons and the final disposal of the matter by the court. Despite the decision in *Re No. 88 High Road, Kilburn*, it would appear that some county courts are making orders for the new leases to run from the expiration of the notices to terminate served under the Act.

Report of H.M. Land Registry for 1959–60

The Chief Land Registrar produces his annual report rather after the style of a company report. Turnover has once again increased, the total number of first registrations in 1959 being 74,077 against 57,349. This total is almost double the 1955 figures. The popularity of registration may be inferred from the fact that first registrations in non-compulsory areas still increase despite the fact that compulsory areas are steadily being increased. Like all good company reports, diversification is mentioned: the number of registrations of new leases, mainly of flats and maisonettes, continued to rise and over the past two years increased by 65 per cent. to 12,490 in 1959. We would like to know what proportion of these registrations is of absolute, instead of merely good leasehold, title. Epsom racecourse is now registered. Turning next to efficiency, the speed of working slightly improved in 1959 but from our experience we think the next report will show a marked improvement. On the question of searches, certificates in the case of searches of whole are normally issued within twelve hours, but Tunbridge Wells searches take an extra day. In the cases of searches of part, normally certificates are issued on the following day, but practitioners should remember that in the case of a title where there are

applications pending, for example, where leases of flats are being completed, there may be a slightly longer delay. Searches of index maps, which are free, rose considerably, and it should not be overlooked that these may be done by telephone.

Dealing with fees at the Land Charges Registry, it is pointed out that there was an increase of about 50 per cent. in the number of cases of insufficient fees. Even then reminders had to be sent in over 1,000 cases for the deficient payments, and in many cases yet further reminders. This is a serious reflection on solicitors.

Finally, the report deals with the financial side. There was an increase in the cost per transaction, but the fee income of approaching £2m. yields a profit of £200,000. The report this year is cheaper at 1s. 6d.

H.M. Land Registry Notice

The following notice has been issued by the Land Registry:

1. Further to relieve congestion in H.M. Land Registry, Lincoln's Inn Fields, the registers, filed plans and index maps relating to the City and County of Leicester, the Counties of Derbyshire, Warwickshire, Staffordshire, Worcestershire and Nottinghamshire were removed to Block 4, Government Buildings, Chalfont Drive, Nottingham on December 1, where as from that date the registration of title work arising from those areas will be done.

2. In order to save time and transport all applications for registration, searches etc. affecting titles in these areas should be sent direct to the Nottingham Sub-Office.

3. Personal searches of the registers and index maps may be made at Nottingham but where it is desired to inspect these records in London they will be made available at Lincoln's Inn Fields at short notice.

4. The postal address of the Nottingham Sub-Office is:

H.M. Land Registry,
Government Buildings,
Chalfont Drive,
Nottingham.

Telephone No. 77711.

RIGHTS IN A HIGHWAY

By J. F. Garner, ll.m., Solicitor

It is the purpose of this article to consider what are the precise rights and duties of the highway authority, the public, of statutory undertakers, and of the adjoining landowners, in respect of a highway. It is proposed first to make an attempt to examine the interests of the highway authority, and the nature of the rights of other persons will then become in some measure clearer.

A. The Interest of the Highway Authority

By section 226 (1) of the Highways Act, 1959, "every highway maintainable at the public expense,[1] together with the materials and scrapings thereof, shall vest in the authority who are for the time being the highway authority for the highway." This "vesting" does not confer on the highway authority a mere "special kind of proprietorship"[2]; it confers on the authority an estate known to the law, a fee simple determinable. As the estate is brought into being by a statute "similar" to the School Sites Acts, this particular kind of fee simple determinable is a fee simple absolute for the purposes of the Law of Property Act, 1925,[3] and, as it is in possession, the highway authority are the holders of a legal estate in the land.[4] This does not, however, precisely define the nature of their rights in the land, for, estate owners though they may be, they are certainly a peculiar kind of estate owner. It will be noticed that it is only "highways maintainable at the public expense," which vest in the highway authority, and it is only that class of highway (numerically by far the most important) with which we are here concerned. The surface, as well as the subsoil, of other highways remains with the adjoining owners on either side *ad medium filum*. This is also true of highways that have been declared to be "prospectively maintainable" under the Public Utilities Street Works Act, 1950, but whereof the management has passed to the local highway authority by virtue of the provisions of that Act.

[1] An expression which replaces the former "repairable by the inhabitants at large."
[2] As was argued in the *Runcorn* case, *infra*.
[3] Law of Property Act, 1925, s. 7 (1).
[4] *Tithe Redemption Commission* v. *Runcorn U. D. C.* [1954] 2 W.L.R. 518.

In the first place, the *corpus* to which the rights of the authority attach—the extent of the land itself—is by no means defined with that degree of exactitude expected in conveyancing practice. In the second place, even the rights that the authority enjoy over that *corpus* by virtue of their estate ownership are not clear. In this century, real property lawyers have become accustomed to seeing the importance of the concept of estate ownership in fee simple—the largest estate in land known to the common law [5]—dwindle under the influence of statute; the estate ownership of the Settled Land Act or the Land Registration Act is confined within the powers given by the particular statute, and social legislation of various kinds, including the Town and Country Planning Acts, the Agriculture Acts and the various Rent Acts, has greatly diminished the rights of the fee simple owner to do as he wishes with his own. In the special case of a highway, however, estate ownership seems to have lost its ordinary meaning altogether except in so far as it confers a liability to pay tithe redemption annuity.[6]

(i) The corpus

In the *Runcorn* case it was said [7] that the Act vested in the local authority "the top spit, or perhaps, I should say, the top two spits, of the road"; earlier cases had shown that a sufficient vertical section of the road was vested in the authority, both above and below the surface, as would be necessary for the discharge of their duties *qua* highway authority,[8] but not in any other capacity or for any other purpose.[9] Trees planted in a highway after dedication are the property of the highway authority,[10] and so are items of street furniture such as street lamps or direction signs erected by the highway authority themselves; so far as other items placed in a highway under statutory authority by some body other than the highway authority are concerned, it seems that these remain the property of the body concerned and they do not become the

5 Challis, *Real Property*, 3rd ed., p. 218: "It [a fee simple] confers, and since the beginning of legal history it always has conferred, the lawful right to exercise over, upon, and in respect to, the land, every act of ownership which can enter into the imagination, including the right to commit unlimited waste. . . ."

6 As in the *Runcorn* case, *supra*.

7 *Per* Denning L.J. (as he then was), at p. 530.

8 See, *e.g.*, *Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880) 14 Ch.D. 785.

9 Not, for example, for the construction of a public lavatory beneath the surface of the street, for which operation they must depend on some other power: *Mayor, etc., of Tunbridge Wells* v. *Baird* [1896] A.C. 434.

10 *Stillwell* v. *New Windsor Corporation* [1932] 2 Ch. 155.

property of the highway authority, as the principle *quicquid plantatur solo, solo cedit* is overridden by the statute.[11]

Horizontally, the limits of a highway are in some cases well defined; it will include any footpaths or cycle tracks as well as the carriage-way, and also any verge *de facto* enjoyed by the public as part of the highway. Where the highway in question is a public path (and all such are maintainable at the public expense[12]), recorded in the course of a survey made under Part IV of the National Parks and Access to the Countryside Act, 1949, the written statement should record the width of the path, and this will be conclusive.[13] In other cases, the general principle, to be applied until the contrary may be shown, is that the highway extends between the outer edge of hedges or fences.[14] In general terms, therefore, it seems that what vests in the highway authority in fee simple is the surface of the highway between its more or less defined limits, and sufficient of the top crust and of the air above the highway[15] to enable the highway authority to carry out their functions as such.

(ii) The highway authority's rights

A fee simple owner can normally do as he likes with his own, subject to the common law principle *sic utere tuo ut alienum non laedas*: not so, however, a highway authority. Not only are they a creature of statute, and so in general terms subject to their acts being declared *ultra vires* if they exceed their statutory powers, but also their very estate in the land is a special statutory creation in spite of its being called a fee simple. If the land ceases to be used for highway purposes the authority's estate ceases, for they have only a determinable fee[16]; they cannot interfere with the rights of the public to use the highway, or otherwise cause an obstruction,

[11] This certainly applies to junction boxes installed by an electricity board: see Electric Lighting (Clauses) Act, 1899, Sched., para. 13, incorporated by the Electricity Act, 1947.

[12] Highways Act, 1959, s. 38, and National Parks and Access to the Countryside Act, 1949, s. 47 (1) (repealed).

[13] National Parks and Access to the Countryside Act, 1949, s. 32 (4) (*c*).

[14] See article by the present writer at (1957) 101 S.J. 218.

[15] In the case of an ordinary fee simple owner, the rights of ownership are enjoyed in the soil *ad inferos*, and in the air above *ad coelum*: see, *e.g.*, *Truckell* v. *Stock* [1957] 1 W.L.R. 161. However, a highway authority own only sufficient of the air space above the highway to enable them to carry out their highway functions: *Wandsworth Board of Works* v. *United Telephone Co.* (1884) 13 Q.B.D. 904.

[16] *Runcorn* case, *supra*. In some cases the authority may have acquired the subsoil as well as just the highway, as in the case where they have purchased land as the site for an intended highway under s. 214 of the Highways Act, 1959, or some other corresponding power; in that event they will be fee simple owners in a true and unqualified sense.

except in so far as they are expressly authorised so to do by statute. For example, they may place bins in the highway for the reception of refuse [17] or kitchen waste,[18] they may erect boundary posts [19] or direction signs,[20] and they may construct refuges [21] and pedestrian crossings.[22] They are not, however, occupiers of the highway: "it would be absurd to contend that wherever the legal estate is, there is occupation. A road is vested in someone, but in a public road there is no occupation of it any more than of a milestone or a direction post . . . I think there is no occupation at all . . ." [23]; therefore there is no question of liability for payment of rates in respect of a highway. Similarly a highway, being described as being *extra commercium* (this expression is customarily used as indicating land not having an owner; in this context, however, it can equally well be understood as land not capable of being let [24]), which fronts, adjoins or abuts on a private street (such as in the case of a cross-street), cannot be charged with street-works expenses incurred in respect of the making up of such a private street under the codes of either 1892 or 1875 contained in Part IX of the Highways Act, 1959.[25]

B. The Rights of the Public

Members of the public as such have a right to pass and repass along the King's highway; this is an ancient common law right, the existence of which is an essential characteristic of a highway. Whether or not the public are entitled merely to walk, to ride on horseback, to drive cattle or other animals or to use wheeled vehicles on any particular highway will depend on the status of the highway. At common law, the greater rights of the public have always included the lesser, in that an established right of way for vehicles implied of necessity a corresponding right of way for cattle and pedestrians, etc., but at least so far as "special roads" are concerned, the Minister of Transport may now exclude specified classes of "traffic" from particular roads, and pedestrians and "animals, ridden, led or driven," are particular classes of "traffic" which

17 Public Health Act, 1936, s. 76 (1) (*a*); Highways Act, 1959, s. 156.
18 Agriculture (Miscellaneous Provisions) Act, 1954, s. 9 (4).
19 Highways Act, 1959, s. 86.
20 *Ibid.* s. 104.
21 *Ibid.* s. 68.
22 Road Traffic Act, 1934, s. 18.
23 *Per* Lord Halsbury L.C. in *Lambeth Overseers* v. *L. C. C.* [1897] A.C. 625.
24 "Owner" is defined in s. 295 (1) of the Highways Act, 1959, as being the person entitled to receive the rack-rent of the premises. Clearly it would not be possible to let a highway at a rack-rent, or, indeed, at any rent.
25 The soil of such a cross-street must be included in the apportionment under the code of 1892, but not under the code of 1875 (see *Road Charges*, 2nd ed., by the present writer, at pp. 25 and 33).

may so be excluded.[26] Particular activities on the highway, which might amount to "passing and repassing" also may be prohibited in individual cases by similar administrative action.[27]

It is clear that the rights of the public in the highway at common law are only for passage; a user of the highway may be restrained if he strides to and fro annoying a neighbouring land owner and disturbing his grouse shooting,[28] or spying on the form of horses training for a race.[29] A passer-by can apparently claim no right to sit down in the centre of the carriage-way,[30] although presumably he may take a rest by a milestone in the fashion of Dick Whittington or the less apocryphal Dr. Barbara Moore[31]; on the other hand he has no right to sit on a wall at the side of and being part of the highway and talk about bees,[32] although "a person leaning up against a fence by the side of the road is not necessarily a trespasser."[33] These cases have always been explained by the passer-by being referred to in such circumstances as a trespasser against the owner of the subsoil beneath the highway; normally,[34] the adjoining landowner, as in the *Duke of Rutland's* case (*supra*). It is not at all clear that this explanation is still sound since the decision in the *Runcorn* case, for if the fee simple in the surface is vested in the highway authority, how can there be said to be a trespass in respect of which the owner of the subsoil could bring proceedings? There is no physical trespass to the subsoil itself and the owner of the subsoil certainly cannot be said to be in possession of a "surface crust" which is vested in the highway authority in fee simple; as a general principle, the plaintiff in trespass must be able to show that he is in possession of the *locus in quo*, as trespass is essentially an injury to possession.[35] On the other hand, in the recent case of *Randall* v. *Tarrant*[36] it seems to have been contemplated that (although on the facts the Court of Appeal did not so hold in the particular case) a driver of a vehicle is capable of trespassing on a highway if he should leave his vehicle on the highway for an unreasonable time. The word "trespasser" was used

[26] See Highways Act, 1959, Fourth Schedule, Classes VIII and IX, and *ibid.*, s. 12.

[27] *e.g.*, motor-cycle trials (Road Traffic Act, 1956, s. 12), and the taking of a dog on a highway otherwise than on a lead (*ibid.* s. 15). In the latter case the procedure that has to be followed is elaborate, resembling that governing the making of by-laws by a local authority.

[28] *Harrison* v. *Duke of Rutland* [1893] 1 Q.B. 142.

[29] *Hickman* v. *Maisey* [1900] 1 Q.B. 752.

[30] *The Calgarth* [1927] P. 93, at p. 107.

[31] *Hickman* v. *Maisey*, at p. 755, *per* A. L. Smith L.J.

[32] *Liddle* v. *North Riding of Yorkshire C. C.* [1934] 2 K.B. 101.

[33] *Per* A. L. Smith L.J. in *Harrold* v. *Watney* [1898] 2 Q.B. 320, at p. 322.

[34] But not invariably: see, *e.g.*, *Mappin Bros.* v. *Liberty & Co., Ltd.* [1903] 1 Ch. 118.

[35] See, *e.g.*, *Jones* v. *Llanwrst U. D. C.* [1911] 1 Ch. 393.

[36] [1955] 1 All E.R. 600.

in this context,[37] but rather in the sense of exceeding the legitimate use of the highway, and it is certainly not clear as to whether the trespass was supposed to have been committed to the injury of the highway authority or of the landowner.

It seems then that the common law recognises certain somewhat ill-defined rights of members of the public in a highway maintainable at the public expense, but if those rights are exceeded, any person aggrieved[38] may be able to take proceedings for a declaration to the effect that the defendant is exceeding his rights, or possibly for damages in proceedings akin to trespass. Unlawful user of the highway by a member of the public may also, in certain circumstances, give rise to proceedings in public nuisance on the grounds of obstruction at the instance of another member of the public who has suffered an injury as a consequence thereof.

C. The Rights of Statutory Undertakers

By "statutory undertakers," we are here thinking of public undertakings authorised by statute to supply some service to the public, such as the gas and electricity boards, water undertakings, local authorities (in their capacity as sewerage authorities), and the General Post Office. All these authorities have powers under their respective constituent statutes to break open the surface of a public highway and to place therein their wires, pipes, mains, switch gear, junction boxes and other impedimenta; as we have seen, such items remain the property of the statutory undertakers concerned. The procedure that must be followed by the undertakers concerned when exercising these rights is prescribed by the Public Utilities Street Works Act, 1950, and it should be remembered that those rights may be exercised in relation not only to the highway itself but also to "controlled land" adjoining the highway.[39] Nevertheless, in this context at least, the extent of the rights exercisable in respect of the highway is reasonably clear, being confined to the several statutory provisions.

D. The Rights and Duties of Adjoining Landowners

In the first place, an adjoining landowner has a common law right to make a means of access from any point on his land on

[37] Especially as the vehicle in question was here left stationary in a narrow lane while the driver and a passenger trespassed in an adjoining field for the purpose of exercising a dog.

[38] It is submitted that these proceedings could be commenced by any other lawful user of the highway. Normally, however, a case of trespass, as distinct from obstruction, would have to be brought at the instance of the occupier of the land.

[39] Act of 1950, First Schedule.

to the adjoining highway.[40] This right has, however, been very greatly reduced by statute, for the making of any access to a highway amounts to development for which express planning permission is normally necessary under the Town and Country Planning Act, 1947,[41] and also access to a trunk road or a special road may be totally excluded by an order made under the Highways Act, 1959. The method of construction of the means of access may itself be subjected to the control of the highway authority by action taken under section 155 of the Highways Act, 1959. Secondly, the adjoining landowner is also the owner *ad medium filum* of the subsoil beneath the "two spits" vested in the highway authority, and also of a column of air above the highway beyond what is needed by the highway authority. Coal and mines of coal in such subsoil are of course vested in the National Coal Board,[42] but otherwise the owner may take minerals, etc., from the subsoil of a highway, provided he does not let down the surface,[43] or disturb any of the services in the highway belonging to one or other of the statutory undertakers above referred to. A landowner also has power to break open the surface of a street for the purpose of connecting his premises to the mains belonging to statutory undertakers situate within the highway.[44] However, as owner of the subsoil *ad medium filum*, he may be entitled to prevent another landowner from running his services through that subsoil in front of his (the first-named owner) property; in practice this problem does not seem to arise often but it may one day become the subject of a neighbours' wrangle.[45]

An adjoining landowner has a number of duties imposed on him by statute by virtue of the proximity of his land to the highway. Thus, he may not allow water to be discharged from gutters or downpipes on his property on to passengers on the highway,[46] he may not maintain barbed wire on a fence on his land which is a nuisance to the highway,[47] and any unfenced or inadequately fenced source of danger to persons using a street on land adjoining the street, must be protected or enclosed, etc., on notice served by

[40] *Marshall* v. *Blackpool Corporation* [1935] A.C. 16. The owner of adjoining land has a private right attached to his property to gain access to the highway. "This is a right which must be reasonably exercised so as not to interfere with the reasonable exercise by the public of their rights of way": *per* Cozens-Hardy M.R. in *Tottenham U. D. C.* v. *Rowley* [1912] 2 Ch. at p. 644.

[41] The making of a new access to a non-classified road where the gates, etc., do not exceed 4 ft. in height will probably be exempt from the need to obtain express permission: General Development Order, 1950, First Schedule, Class II.

[42] Coal Act, 1938, s. 3; Coal Industry Nationalisation Act, 1946, ss. 5 and 38.

[43] See, *e.g.*, *Benfieldside Local Board* v. *Consett Iron Co.* (1877) 3 Ex.D. 54.

[44] See, *e.g.*, Public Health Act, 1936, s. 34.

[45] See article by the present writer at 14 Conv.(N.S.) 295.

[46] Highways Act, 1959, s. 142.

[47] *Ibid.* s. 143.

the local authority[48]; other statutory provisions are designed to control dangerous buildings.[49] In addition, the common law regards the highway authority and the adjoining landowner in the same manner as any other two owners of adjacent properties. Thus, it seems that the landowner would be held responsible for any damage caused to the highway by trees planted on the owner's land, either from overhanging branches or underground roots.[50] The landowner may also be liable in damages to a user of the highway if he should be injured as a consequence of a nuisance arising on his land (*e.g.*, in the case of a branch falling off a tree[51] or by escaping surface water[52]), similarly, the landowner is under a duty to maintain his premises in a reasonably safe condition so that injury will not be caused to persons lawfully in the highway.[53] Incidentally this is where the special position of a trespasser on the highway may be of importance, as a defendant, when sued for damages caused to such a plaintiff, may be able to establish the fact that the plaintiff has exceeded his rights as a defence in such proceedings.[54]

Conclusion

It seems that although highways have as long a history as the common law, or even as civilisation itself, several of the general principles of law concerning them have still not been fully worked out. The fee simple vested in a highway authority relates to a but ill-determined *corpus*, and the rights it confers, considerably less than a true juristic "ownership," are also ill-defined. The rights of the adjoining owner in the subsoil are so insubstantial as to be virtually worthless in most circumstances,[55] whilst his duties, sounding in tort, may well be onerous. The rights of the public to use the highway are also vague and ill-defined, and it is by no means clear how or in what circumstances a member of the public can be said to be a "trespasser" on a public highway. Concepts and general principles of this kind are notoriously bad subjects for legislation, and we will probably have to look to the courts for further clarification.

[48] *Ibid.* s. 144. It will be noted that this section applies only to a "street" as distinct from a highway; the two words are not synonymous.
[49] *Ibid.* s. 145; Public Health Act, 1936, s. 58.
[50] *Butler* v. *Standard Telephones and Cables* [1940] 1 K.B. 399.
[51] *Caminer* v. *Northern and London Investment Trust, Ltd.* [1951] A.C. 88.
[52] *Att.-Gen.* v. *Waring* (1899) 63 J.P. 789.
[53] See *Clerk & Lindsell on Torts*, 11th ed. at p. 695.
[54] As in *Randall* v. *Tarrant*, *supra*.
[55] Presumably if the prehistoric boat of *Elwes* v. *Brigg Gas Co.* (1886) 33 Ch.D. 562 were found under the surface of a highway, it would belong to the subsoil owner and not to the highway authority; but what if it were found within the "top two spits"?

THE CREATION OF REVERSIONARY LEASES

By J. A. Andrews, B.A., B.C.L.

The reading of section 149 (3) of the Law of Property Act, 1925 [1] seems straightforward, but the recent case of *Re Strand and Savoy Properties Ltd., D. P. Development Co. Ltd.* v. *Cumbrae Properties Ltd.*[2] does show that the subsection can raise difficulties.

The subsection itself reads as follows:

> A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void . . .

The subsection then goes on to make exceptions in the case of leases taking effect in equity under a settlement, or created out of an equitable interest under a settlement, or under an equitable power for mortgage, indemnity or other like purpose.

Since leaseholds were not freehold estates there was never any problem as to abeyance of seisin until they fell into possession because the tenant was never seised anyway. Furthermore, of course, the perpetuity rules do not normally apply to leaseholds since the lessee generally takes a vested interest forthwith.[3] The result of this was that an owner could grant a leasehold estate to commence at any fixed date in the future. So, for example, a man could grant a lease in 1900 which was to commence in 1960.[4] Section 149 (3) was passed to curtail this power. Such a grant as the above would be void if limited after the commencement of the Law of Property Act.

Unfortunately, leases are not always as simple as the above and problems may arise in two cases. The first is where there is a contract to make a grant of a lease more than twenty-one years after the contract as opposed to the grant of a lease to commence more than twenty-one years after the grant. The second problem, which does not appear to have been judicially discussed, is where a lease is granted on terms that it shall begin upon the occurrence of some

[1] 15 & 16 Geo. 5, c. 20.
[2] [1960] 3 W.L.R. 1; [1960] 2 All E.R. 327.
[3] *Mann, Crossman & Paulin Ltd.* v. *The Registrar of the Land Registry* [1918] 1 Ch. 202.
[4] *Ibid.*

future uncertain event which may or may not occur within twenty-one years of the grant.

The Reversionary Grant

The first problem was raised by counsel in *Northchurch Estates Ltd.* v. *Daniels.*[5] Evershed J., as he then was, found on a proper construction of the instrument that the lessor granted a term of one year together with an option in favour of the tenant to renew the tenancy for a further twelve months at the end of that and each successive year. The learned judge properly held that this was a perpetually renewable lease as described by paragraph 7 of Schedule 15 of the Law of Property Act, 1922, and that a tenancy was thereby created for a term of 2,000 years in favour of the tenant. However, what was more significant was the ingenious argument put forward by counsel for the plaintiff. He reasoned that the effect of such a contract was to create a succession of reversionary terms, each for one year conditional upon prior notice being given of the tenant's intention to exercise the option.[6] The first term would have commenced on March 25, 1939, and then on *ad infinitum*. If this was so, counsel argued, then the term starting in March 1959 [7] would be outside of the period of twenty-one years allowed by section 149 (3) and therefore void.

If this reasoning is correct it would create an irreconcilable conflict betwen section 149 (3) of the Law of Property Act, 1925, and Schedule 15 of the Act of 1922. A contract to create a perpetually renewable lease will result in the creation of a succession of terms from the grant and so be void as regards those terms commencing after twenty-one years from the date of the instrument although the 1922 Act says it shall become a term of two thousand years. It is also worth bearing in mind that both statutes came into operation on January 1, 1926. Evershed J. concluded that the statutes should be read together and that section 149 (3) was not intended to cover the case of perpetually renewable leases since they were automatically converted into grants of leases for two thousand years by operation of law and in that guise there was no scope for the operation of section 149 (3). It was not necessary, therefore, for him to decide on counsel's suggestion that an option available more than twenty-one years after the date of the original grant was void, though his judgment suggests that had this not been a perpetually renewable lease under the terms of Schedule 15 he would have accepted counsel's arguments.

[5] [1947] Ch. 117.
[6] This, in fact, is how such a contract was described by Warrington L.J. in *Gray* v. *Spyer* [1922] 2 Ch. 22 at p. 33, and Scrutton L.J., *ibid.* p. 39.
[7] The grant was made on January 14, 1938.

In *Re Strand & Savoy Properties Ltd.* Buckley J. was faced more squarely with the problem. The original lease was for a period of thirty-five years and contained a provision whereby at the tenant's option the lease would be renewed for a further period of thirty-five years provided the tenant gave notice twelve months before the expiration of the term.[8] The plaintiffs and defendants in this action were successors in title to the original lessors and lessee. The defendants, successors to the original lessors, contended that the provision for renewal was void under the second branch of the principle in section 149 (3). It will be remembered that the subsection reads: "A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, *and any contract made after such commencement to create such a term shall likewise be void.*"

It is beyond dispute that a grant of a lease to commence more than twenty-one years after the grant is void. Equally a contract creating such a lease is void. Such a contract is void on the first leg simply because the term is limited to commence more than twenty-one years after the *instrument* purporting to create it. Suppose, however, that we have not a contract purporting to create a lease to take effect in (say) thirty-five years, but a contract whereby the lessor agrees that in thirty-five years he will grant a lease taking effect immediately upon the grant, or within twenty-one years of it. Counsel for the plaintiff in *Re Strand & Savoy Properties Ltd.* argued that the subsection does not invalidate such a contract and Buckley J. found to this effect.

Counsel for the defendant unsuccessfully argued that the second leg of the subsection is in effect aimed at such contracts as these. On a literal interpretation such an argument cannot be supported. The subsection says "any contract made after [1925] to create such a term shall likewise be void." "Such a term" is one limited to commence more than twenty-one years after the instrument purporting to create it and the instrument which will purport to create it is not the contract but the grant which the intending grantor contracts to make in the future. It is only if the grant is void that the contract is void. In other words the legislature is saying nothing more than that a contract to create a void grant is itself void. Counsel for the defendant conceded that this was the literal interpretation but argued that since it led to such absurdity it should be rejected in favour of one which gave effect to the intention of the legislature. It was possible to discern in the subsection a policy of preventing

[8] The perpetuity rules do not apply to options to renew leases: See Morris and Leach, *The Rule against Perpetuities*, p. 216, esp. note 5.

undue complication of title and the court should give effect to this policy by interpreting the words as rendering void any contract to grant a lease to commence at a date more than twenty-one years from the date of the contract. This argument was rejected in favour of the literal interpretation.

The result of this decision is to suggest a means of avoiding section 149 (3). Suppose a would-be lessor wishes to grant a term commencing in the year 2001. If he makes a grant in 1960 it is void. Similarly if he agrees by contract to create a term commencing in 2001 and the contract purports to create that term the contract will be void, under the first leg of the rule. If on the other hand he makes a contract in 1960 whereby he agrees that in 2001 he will grant a term commencing from the time of the grant it is not void. This is because the test is in all cases the same, the term must commence within twenty-one years of the instrument purporting to create it. In this last case the contract does not purport to create the term, it merely promises to create another instrument which will grant the term.

Re Strand & Savoy Properties Ltd. was, of course, confined to an option for renewal in a previous valid lease, but there seems no justification for distinguishing a contract to create a valid term in thirty-five years time according to whether or not it is preceded by another identical term which it is intended to renew. As Buckley J. pointed out, the literal interpretation of the statute leads to no repugnance, no absurdity and no hardship. He pointed out that it is often desirable to adopt the narrow literal construction of a statute which restricts "what would otherwise be the freedom of anyone to contract in this sort of respect in any way he thought desirable." It is, of course, possible that the drafters of the subsection might not have intended this result, but this is not the first time that the probable intentions of our property legislators have been disregarded. The full effect of Buckley J.'s reasoning is best summed up in his own words: ". . . the subsection is confined, as far as contracts are concerned, to contracts to create terms which, when created, will only take effect more than twenty-one years from the dates of the instruments creating them; that is to say, it invalidates contracts for the granting of leases which will, when granted, be reversionary leases, the postponement of the commencement of the term being for more than twenty-one years from the date of the lease."

The Contingent Lease

The second problem with regard to section 149 (3) is its application to leases which are to commence on a future uncertain event. It is a well-established rule that the commencement of a lease may

be contingent upon some further event.[9] It matters not that the date of commencement is uncertain provided that it will become certain and that the lease is for a definite period. So, for example, a term to begin on the outbreak of war,[10] a term to commence on the termination of a prior lease whether by death, surrender or forfeiture,[11] a term to commence after lives in being [12] are all valid. In *Brilliant* v. *Michaels* [13] the plaintiff alleged that the defendant agreed to lease a particular flat to him when it became vacant. Evershed J. found as a matter of fact that no final and binding contract for a tenancy was entered into by the parties, but he stated quite firmly that a contract for a lease was enforceable notwithstanding that the commencement of the term was expressed by reference to the happening of a contingency which was at the time uncertain, provided that at the time the contract was enforced the contingency had occurred. In fact here the contingency occurred within three months of the agreement but Evershed J. concluded that there did not appear to be "any matter of principle which ought to distinguish the case of a contingency which must happen within, say, ten or twenty years, and a contingency which may not happen for a very long time indeed, if at all." At first glance this seems reasonable, but it is difficult to see how it can be reconciled with section 149 (3) which does not appear to have been drawn to his attention. Can it be said that whilst parties cannot create a lease to begin at more than twenty-one years from the instrument purporting to grant it, they are nevertheless able to create a lease commencing on a future contingent event which might occur fifty or sixty years after the creation of the term? Despite the dicta of Evershed J. there may be very good reason for distinguishing at least three types of contingency, *viz.*, (1) contingencies which must occur within twenty-one years, (2) contingencies which cannot possibly occur within twenty-one years, (3) contingencies which may or may not occur within twenty-one years.

Leases depending on contingencies of the first type will obviously be valid. Examples of this are leases to commence "at the termination, forfeiture, or surrender of this term," where such term has less than twenty-one years to run; "when my eldest son leaves school," if he is already at school.

Leases to commence on a contingency which cannot possibly occur within twenty-one years of the instrument purporting to

[9] Fry, *Specific Performance*, p. 458, para. 982; *Marshall* v. *Berridge* (1881) 19 Ch.D. 233, *per* Lush L.J., at p. 244.
[10] *Swift* v. *Macbean* [1942] 1 K.B. 375.
[11] *Bishop of Bath's Case* (1605) 6 Co.Rep. 34a.
[12] *Clark* v. *Sydenham* (1607) 1 Brownl. & G. 136; *Goodright* d. *Hall* v. *Richardson* (1789) 3 T.R. 462 at p. 463.
[13] [1945] 1 All E.R. 121.

create the lease are presumably void since they overtly infringe the provisions of section 149 (3). Examples of this would be terms limited to commence: " when my eldest son becomes twenty-one," if the grantor has no son at the time; " at the first general election after 1982."

The problems connected with the third category of contingency permit of no definite answer. Examples of such terms would be those which are to commence at the death of a life or lives in being,[14] or on the outbreak of war.[15] Both *Swift* v. *Macbean* and *Brilliant* v. *Michaels* were cases where the term was limited to commence on a future contingency which might have occurred before or after the lapse of twenty-one years, though in both cases the parties contemplated the occurrence of the contingency within a short period and in both cases it did occur shortly after the drafting of the instrument. It would have been more interesting if the contingency had occurred after the lapse of twenty-one years. Had that happened then surely the courts could not have sanctioned something which was void under section 149 (3).

In these cases where there is a doubt as to whether the term will commence within twenty-one years or not *Swift* v. *Macbean* and *Brilliant* v. *Michaels* would appear to be *sub silentio* authority for the proposition that they are not automatically void. However, it would appear to be open to the courts (i) to declare such terms void since they may infringe section 149 (3), (ii) to uphold them since they do not overtly infringe section 149 (3) or (iii) to apply the " wait and see " principle. If in fact the contingency does occur within twenty-one years then they could enforce the term, on the other hand if the contingency does not occur in time they could refuse to enforce it. In these circumstances the time when the contingency occurs would decide not only when the term began but also if the grant were void or not.[16]

[14] See *Goodright* d. *Hall* v. *Richardson* (1789) 3 T.R. 462.

[15] See *Swift* v. *Macbean* [1942] 1 K.B. 375. No mention was made of s. 149 (3) in this case.

[16] The application of the perpetuity rules to leasehold interests is obscure. In so far as the term is to begin at some future fixed date, then it is a vested interest and the perpetuity rules cannot apply. In so far as the term is to commence on some future event, which must happen though it is uncertain when it will happen, there would seem to be sufficient vesting. However, if the future event may never happen then the term cannot vest until that event happens. If the future event might possibly be outside of the perpetuity period then the term would appear to be void. However, it must be borne in mind that the perpetuity rules do not affect the contractual liability to damages or specific performance of the original promisor or his estate at the suit of any one entitled to the benefit of it: *Hutton* v. *Watling* [1948] Ch. 26, following *South Eastern Ry.* v. *Associated Portland Cement Manufacturers* [1910] 1 Ch. 12.

The problem has received more discussion in America. See, for example, *Haggerty* v. *City of Oakland*, 161 Cal.App. 2d 407, and Leach, 73 Harv.L.R., 1318.

THE MODERN LAW OF AGRICULTURAL HOLDINGS—VI

Miscellany-at-Law Continued

By J. Muir Watt, m.a., Barrister-at-Law

It is proposed in this article, which is the last of the present series, to deal with some further points of difficulty or special interest in the modern law of agricultural holdings and, in doing so, to consider a few recent legal decisions.

Severance of the reversion

One of the most difficult problems is the effect of the severance of the reversion. This may seem, at first sight, a somewhat abstract question, but it does in fact have a direct bearing upon such practical matters as compensation for disturbance, improvements and tenant-right, and rental arbitrations. Except for a very recent county court decision, which is discussed in detail below, there is no help to be found in reported cases.

The statutory provisions

It is as well to begin by recalling the relevant statutory provisions.

Section 140 of the Law of Property Act, 1925, provides for the apportionment of conditions on the severance of a reversion and sections 141 and 142 provide for the running of rent and the benefit and burden of covenants upon such severance. These provisions apply to tenancies generally, including tenancies of agricultural holdings.[1]

The wording of section 140 (1), which deals with conditions or rights of re-entry as well as other conditions, is worth noting. It provides that such conditions or rights shall be apportioned on severance and shall remain annexed to the severed parts of the reversion and be in force "in like manner as if the land comprised in each severed part . . . had alone originally been comprised in the lease." The wording of sections 141 and 142 is also noteworthy. They provide, in essence, that rent reserved by a tenancy, and the benefit and burden of covenants having reference to the subject-matter of the tenancy, are to be annexed and incident to, and to go

[1] Law of Property Act, 1925, s. 154.

with, the reversionary estate "notwithstanding severance of that reversionary estate." What these sections are providing is that conditions and provisions of a tenancy which were obviously designed to apply to the reversion as an undivided whole are to be treated as applying to the severed parts of the reversion. There is, however, nothing in these provisions which can be interpreted as actually converting the tenancy into a number of separate tenancies corresponding to the number of parts into which the reversion is divided. In other words, although the landlord is divided the tenancy remains one, but subject to statutory provisions for apportionment intended to make the relationship between a multiple landlord and a unitary tenant workable.

The old law was that on severance of the reversion the owner of a severed part could not give the tenant a valid notice to quit the corresponding part of the holding unless the severance had been recognised by the legal apportionment of the rent.[2] This rule was altered by section 140 of the Law of Property Act, 1925,[3] subsection (2) of which made it clear that a valid notice to quit could be given by a person entitled to a severed part of the reversion, without any requirement in regard to legal apportionment of the rent, but subject to a special right for the tenant to enlarge the notice into a notice to quit the entire holding. As originally drafted, however, section 140 (2) of the 1925 Act had the effect of depriving the tenant of an agricultural holding of compensation for disturbance when he elected to quit the entire holding in this way. To meet this difficulty, section 2 of the Law of Property (Amendment) Act, 1926, added a proviso which preserved the tenant's right to such compensation in these circumstances. This particular proviso was repealed by the Agricultural Holdings Act, 1948,[4] but its effect was reproduced in sections 32 and 34.

The wording of section 32 of the 1948 Act is of some importance. It speaks of a notice to quit "part of the holding" given by a person entitled to a severed part of the reversionary estate in the holding and of the tenant giving notice that he accepts the notice to quit as a notice to quit "the entire holding." It is clear from this that the severance of the reversion is not itself regarded as producing separate tenancies. It is assumed that there is still one entire holding and, therefore, one contract of tenancy, despite the severance of the reversion, since an agricultural holding is, by definition, the aggregate of the agricultural land comprised in a single contract of tenancy.[5]

2 *Re Bebington's Tenancy, Bebington* v. *Wildman* [1921] 1 Ch. 559.
3 See *Smith* v. *Kinsey* (1936) 53 T.L.R. 45.
4 See s. 98 and the Eighth Schedule.
5 1948 Act, s. 1 (1).

Another relevant statutory provision is section 61 of the 1948 Act. This provides in effect that where the reversion has been severed, and the rent payable by the tenant has not been apportioned with his consent or under any statute, the tenant is entitled to require that any compensation payable to him under the Act should be determined as if the reversion had not been severed. Certain consequential directions are given to the arbitrator. The section is badly and loosely worded. For example, it speaks of the " holding " being " divided " although it is clear from the context that it is referring to the reversion being severed. The section seems to be dealing only with the case where the tenant is quitting the entire holding, not where he is quitting part of the holding. It entitles him, if he so desires, to have his compensation assessed as if the reversion had not been severed, in which case the arbitrator is to apportion the amount awarded " between the persons who for the purposes of this Act together constitute the landlord." If the tenant does not exercise this right he, presumably, has to separate his claims against the several persons entitled to the severed parts of the reversion. It is also implied that if the rent has been apportioned with the tenant's consent or under any statute (although not, apparently, if apportioned by judicial process) the tenant would have to make his claims separately against the several reversioners. It will be seen below that, according to one view, legal apportionment of rent results in the emergence of separate tenancies, with the necessary consequence that the claims to compensation in respect of each tenancy would be wholly separate. It may be said with justification that section 61 is a cryptic section which does not shed much light on the position where a tenant, having been given a notice to quit by a person entitled to a severed part of the reversion, quits only the corresponding part of the holding, not the entire holding.

Effect of legal apportionment of rent

It has been seen above that there appears to be nothing in the Law of Property Act provisions dealing with severance to support any suggestion that the mere act of severance creates separate tenancies. The view has, however, been put forward, and is supported by the recent county court decision in *Paul* v. *Caldwell*,[6] that severance coupled with the legal apportionment of the rent results in the creation of separate tenancies. This view was expressed by a writer on the law of agricultural holdings whose opinions must always command respect, Aubrey J. Spencer, the author of a

[6] (1960) 110 L.J. 704; more fully reported in (1960) 176 E.G. 743.

scholarly work on agricultural holdings [7] and at one time editor of *Woodfall*.[8] Spencer, commenting on section 18 of the Agricultural Holdings Act, 1923, now reproduced in section 61 of the 1948 Act, said: "When a legal apportionment of the rent has been effected in any such case, separate tenancies will be created." [9] The same view is taken by the present editors of *Hill and Redman*, who say: "Once an apportionment has become binding upon the tenant he is in the same position as if he held each of the several parts under distinct demises from the respective owners." [10] Neither Spencer nor the editors of *Hill and Redman* quote authority for this proposition. They appear to regard it as self-evident. But is it? Before trying to reach a final answer to this question it would be as well to look at the decision of Judge Southall in *Paul* v. *Caldwell*.[11]

The county court decision in Paul v. Caldwell

The facts in the case of *Paul* v. *Caldwell*, which arose on a special case stated by an arbitrator under the Agricultural Holdings Act, 1948, were that the reversion expectant upon the tenancy of an agricultural holding (the Tattingstone Hall Farm) was divided into four parts and the tenant agreed with all the several reversioners to an increase in the rent of the whole farm. The increased rent was apportioned by an agreement to which the tenant was not himself a party, but the tenant paid without any protest the apportioned rent demanded. Subsequently all the reversioners together demanded an arbitration under section 8 of the Agricultural Holdings Act, 1948, in respect of the whole farm, and an increased rent for the whole farm was awarded by the arbitrator. Once again, the increased rent was apportioned by an agreement among the reversioners to which the tenant was not a party, but the tenant paid without any protest the apportioned rent demanded. At a later date the owner of the severed part of the reversion relating to one of the four parts (this part being referred to in the judgment as "the blue land") demanded a reference to arbitration under section 8 of the 1948 Act of the question of the rent payable for this particular piece of land. The point of law to be decided was whether he was entitled to demand such a reference. The answer to this question depended upon whether the blue land had, as a result of the severance, become

[7] *Agricultural Holdings Act*, 1923. The last edition, published in 1931, was the eighth.

[8] He edited this classic from 1921 (twentieth edition) to 1933 (twenty-third edition), after which Blundell took over.

[9] *Agricultural Holdings Act*, 1923, 8th ed., p. 72.

[10] *Hill and Redman's Law of Landlord and Tenant*, 12th ed., p. 870.

[11] See note 6, *ante*.

a separate agricultural holding. Judge Southall decided that the blue land had become a separate agricultural holding and that the arbitrator had, therefore, jurisdiction under section 8 to determine the rent payable in respect of it.

The county court judge gave a closely reasoned judgment, which may be summarised as follows: section 140 of the Law of Property Act, 1925, and sections 32 and 61 of the Agricultural Holdings Act, 1948, were relevant as indicating the effect of the severance of the reversion. The owner of a severed part of the reversion could give a notice to quit that part of the land which is comprised in the reversion, but he was not the " landlord of an agricultural holding " unless the severance created a separate holding. This implied the existence of a separate contract of tenancy. It seemed clear that the mere act of severance did not automatically create as many individual agricultural holdings as there were severances. The effect of section 140 of the Law of Property Act, 1925, was to create privity of estate but not privity of contract. If, however, in addition to the severance of the reversion, the rent is legally apportioned, whether with the consent of the tenant or under statute, there is privity of contract as well as privity of estate. The judge's reasoning here deserves careful attention. His analysis of the situation is that the effect of the legal apportionment of rent is to transform each of the reversioners into an individual landlord. This is because a " landlord " is defined in section 94 (1) of the 1948 Act as " any person for the time being entitled to receive the rents and profits of any land." As a result of the legal apportionment, the reversioner is entitled to receive the rent in respect of the particular piece of land comprised in the reversion. He is, therefore, a " landlord." If so, there must be a " letting " as between him and the tenant. This, in turn, means that there must be a " contract of tenancy " in respect of the piece of land in question, since a contract of tenancy is a letting of land, or agreement for letting land, for a term of years or from year to year. Finally, there must be a separate agricultural holding, as an agricultural holding means the aggregate of the agricultural land comprised in a contract of tenancy. The judge held that, on the facts of the case, there had been a legal apportionment of the rent, as the tenant's conduct over a period of time in paying the apportioned rent without demur amounted to a consent to the apportionment.

Was Paul v. Caldwell correctly decided?

The county court judge in *Paul* v. *Caldwell* had to decide a most difficult question. That part of his reasoning which depends upon the distinction between privity of estate and privity of

contract is not entirely convincing. In the case of an ordinary assignment of the whole of the reversion there is no privity of contract between the assignee and the tenant, but privity of estate only. Nevertheless, the assignee is the landlord, there is a landlord-tenant relationship and, hence, a letting. There is a subsisting contract of tenancy, although the contract was made with the present landlord's predecessor. The important part of the judge's reasoning is, however, his point that the legal apportionment of rent, by precisely quantifying the amount payable to each of the reversioners, transforms them into " landlords " within the meaning of section 94 (1) of the 1948 Act as being the persons for the time being entitled to receive the rent from defined parcels of land. It is difficult to deny that a person entitled to a severed part of the reversion, whose entitlement to rent is altered by legal apportionment from an indefinite share to a certain amount, becomes a landlord in this sense. If so, the rest follows. There must be a landlord-tenant relationship, *i.e.*, a letting and, therefore, a contract of tenancy within section 94 (1). A separate contract of tenancy means a separate agricultural holding.

There are, nevertheless, certain difficulties about this result. If the legal apportionment of rent has the effect of creating separate tenancies, and consequently separate holdings, surely section 61 of the 1948 Act would be worded differently from its present wording? Its wording seems clearly to imply that in the case of a single agricultural holding, the reversion may be severed either with or without the legal apportionment of rent, but that in each case there remains one holding with a severed reversion. If the legal apportionment of rent automatically led to the creation of separate tenancies and separate holdings it would not have been necessary for section 61 to introduce the qualification, " and the rent payable by the tenant has not been apportioned with his consent or under any statute." If such an apportionment had taken place, there would, according to the doctrine under discussion, be no question of the reversion in respect of one agricultural holding being " vested in more than one person in several parts," as section 61 describes it—there would be separate agricultural holdings. To put it in another way, there would have been no need to exclude the case where the rent had been legally apportioned, because section 61 could not possibly have applied to such a case; it would not have been even prima facie within it.

A person entitled to receive a defined quantum of rent from a particular piece of land is clearly a " landlord " within the meaning of section 94 (1). But is not a person entitled to a severed part of

the reversion a "landlord" in this sense even if the rent has not been legally apportioned? Although the precise quantum is not defined, it is capable of being defined and he is clearly entitled to some rent from the land comprised in his reversion. One way of defining the exact quantum would be for him to sue the tenant for rent. The amount of rent to which he is entitled would be defined in the court proceedings, and this is indeed one method of legal apportionment. It may be, however, that until a legal apportionment has been made it cannot be said that any one of the persons entitled to the severed parts of the reversion is "for the time being entitled to receive the rents and profits of any land." All these persons together are entitled to the rents and profits of the whole holding, but until there has been a legal apportionment the right of each of them separately to rent is an inchoate or imperfect right which requires a further process before it becomes crystallised.

Section 32 probably does not present any real difficulty, but its operation, on this view, would be limited to the cases where the rent had not been legally apportioned. Once the rent had been legally apportioned, the reversioners would not be persons entitled to the severed parts of the reversionary estate in the holding, as described in section 32, but landlords of separate holdings.

There are certain difficulties about the application of clauses in the original tenancy agreement to the separate tenancies created by the legal apportionment of the rent, if this doctrine is correct, but these difficulties are perhaps more practical than legal. For example, what is the position in regard to clauses which were designed to regulate cropping on the original holding as a balanced whole and which might require, say, one of the parts which is now regarded as subject to a separate tenancy to be cropped in a manner which would produce a most unbalanced result for a separate holding?

In spite of these difficulties, it is not clear how the argument based on the definition of a "landlord" in section 94 (1) of the 1948 Act can be refuted. It is therefore submitted, but with some doubt, that the decision in *Paul* v. *Caldwell* [12] was correct.

Effect on compensation

The actual decision in *Paul* v. *Caldwell* [12] was that where the reversion had been severed and there was a legal apportionment of rent, separate agricultural holdings came into existence, with the result that the reversioners were entitled, as landlords of the separate holdings to demand arbitration as to rent under section

[12] (1960) 110 L.J. 704; more fully reported in (1960) 176 E. G. 743.

8 of the 1948 Act. It follows also, however, that the compensation provisions of the Act apply to these separate holdings—compensation for disturbance, improvements, tenant-right and so on.

Where the reversion is severed, but no legal apportionment has taken place, the position as to compensation is different. Section 60 of the 1948 Act, which provides for compensation where the landlord resumes possession of part of a holding either by virtue of section 31 (1) of the Act or in pursuance of a provision in that behalf contained in the contract of tenancy, has no application where a tenant quits a part of a holding in consequence of the resumption of possession of a part by a person entitled to a severed part of the reversion. If the tenant "enlarges" a notice to quit part of a holding given by a person entitled to a severed part of the reversion into a notice to quit the whole holding, then, under the machinery of section 32, the tenant will be entitled to the normal compensation in respect of the whole holding. If, however, he decides to quit the part only, he seems to be in an unfavourable situation. He does not appear to be entitled to any compensation for disturbance.[13] His choice, therefore, apparently is between (1) "enlarging" the notice to quit part into a notice to quit the whole under section 32, thereby securing compensation for disturbance in respect of the whole by virtue of section 34 (1) (*b*), and (2) accepting the notice at its face value as a notice to quit part only, thereby forfeiting his claim to any compensation for disturbance. There is a similar difficulty about compensation for improvements and tenant-right. Such compensation accrues to the tenant "on the termination of the tenancy, on quitting the holding."[14] If the tenant quits part of the holding, in pursuance of a notice to quit given by a person entitled to a severed part of the reversion, he is not quitting "the holding," nor is he quitting on "the termination of the tenancy." He accordingly does not seem to qualify for compensation at that time. It may be possible to argue, although the matter is doubtful, that compensation under these heads will accrue due when the tenant finally quits *all* the land that was comprised in the original contract of tenancy, and that he can then pursue claims against the several "landlords." It would seem that there is a lacuna in the 1948 Act in this respect.

Conclusion

It is fairly evident that the law relating to the severance of the reversion of an agricultural holding is obscure and difficult. It is

[13] The same conclusion is reached by the author of the article in (1958) 102 S.J. 258.
[14] 1948 Act, s. 47 (1).

regrettable from the point of view of legal education that the tenant did not appeal to the Court of Appeal in the *Paul* v. *Caldwell* case, as it would have been most instructive to have heard the views of that court on this topic. Unfortunately, litigants do not always have the best interests of legal education at heart.

Some legal points affecting arbitrations

A great many agricultural arbitrations take place without any assistance from lawyers either in the preparation of the case for the hearing or in the conduct of the hearing itself. The arbitrator will be an experienced agricultural valuer or land agent and the advocates at the hearing will often be members of the same profession. The questions in issue will commonly be questions of valuation and compensation. It may be, however, that in the future legal assistance will be more frequently sought in the framing of awards, owing to the obligation imposed by the Tribunals and Inquiries Act, 1958, to furnish a statement of reasons for the decision in certain circumstances, and the consequential risk of proceedings to set aside the award for error of law apparent on its face. A recent High Court decision has focused attention on the nature of proceedings of this kind and is discussed below.

Obligation to state reasons for award

Before April 1, 1959, arbitrators were not required by law to give reasons for their awards and, in practice, never gave reasons. As a result of the coming into force of section 12 of the Tribunals and Inquiries Act, 1958, however, on April 1, 1959,[15] the position was completely changed. As from that date arbitrators appointed "otherwise than by agreement" (which includes both arbitrators appointed by the Minister of Agriculture, Fisheries and Food and those appointed by the President of the Royal Institution of Chartered Surveyors in cases where the Minister or any other person acting on behalf of the Crown is a party to the arbitration) are under a duty to furnish a statement of the reasons for their decisions if requested to do so. Section 12 (4) of the Tribunals and Inquiries Act, 1958, gave the Lord Chancellor and the Secretary of State for Scotland the power, after consultation with the Council on Tribunals, to exclude the decisions of a particular tribunal, or any description of such decisions, from the requirement as to giving reasons, on the

[15] Tribunals and Inquiries Act, 1958 (Commencement) Order, 1959 (S.I. 1959, No. 451 (C. 5)).

ground that the subject-matter of such decisions, or the circumstances in which they were made, made the giving of reasons unnecessary or impracticable. The Council on Tribunals recommended against giving exemption to any class of agricultural arbitrators' awards, and this recommendation was accepted by the Ministers. The relevant paragraphs from the First Report of the Council on Tribunals are of some interest in this connection:

> "67. We were also of the opinion that exemption should not be allowed to agricultural arbitrators and arbiters appointed otherwise than by agreement under the Agricultural Holdings Act, 1948, and the Agricultural Holdings (Scotland) Act, 1949. As regards agricultural arbitrators in England and Wales, we heard evidence from the Ministry of Agriculture, Fisheries and Food, the Royal Institution of Chartered Surveyors and the Chartered Auctioneers' and Estate Agents' Institute, and we were also notified by letter of the views of the Chartered Land Agents' Society. The Scottish Committee heard evidence as regards agricultural arbiters in Scotland from the Department of Agriculture for Scotland, the Scottish Agricultural Arbiters' Association, the Scottish Landowners' Federation and the National Farmers' Union of Scotland.
>
> "68. Here again, we recognised that in such cases any statement of reasons by the arbitrator or arbiter might be very brief and consist of no more than that the arbitrator had based his award on his own knowledge and experience. We did not, however, regard this as a reason for granting exemption, and our recommendation to this effect was accepted."

One may wonder of what value as a "statement of reasons" is a statement that the award is based on the arbitrator's own knowledge and experience, but arbitrators dealing with matters of value rather than law will be relieved to hear that they are not expected to justify their opinions on value by means of a detailed explanation.

The request for a statement of reasons must be made "on or before the giving or notification of the decision" and the statement may be either written or oral. There is a proviso to section 12 (1) of the Tribunals and Inquiries Act to the effect that the tribunal (*i.e.*, in the present case, the arbitrator), may refuse to furnish the statement to a person not primarily concerned with the decision if of opinion that to furnish it would be contrary to the interests of any person primarily concerned. In practice, any request for a statement is likely to be made in most cases only by a party to the arbitration, who is clearly a person primarily concerned. It is, however, conceivable that an assignee of one of the parties to an

arbitration might wish to request the arbitrator to state his reasons. As the award is binding on an assignee (paragraph 19 of the Sixth Schedule to the Agricultural Holdings Act, 1948) he would normally be entitled to require a statement of reasons.

No rules can be laid down about the amount of detail required. It is clear from the passage quoted above that where the point is entirely one of valuation a brief statement that, having heard the arguments and inspected the subject-matter, the arbitrator's decision is that the rent or compensation, as the case may be, is so-and-so, may be sufficient.

It is advisable, if a party desires to ask for reasons, to make the request before the end of the hearing, although section 12 allows it to be made " on or before the giving or notification of the decision." The word " on " in connection with the receipt of a written award may be open to a little doubt. What lapse of time after the receipt of the award would render the request out of time?

Section 12 (3) of the Tribunals and Inquiries Act, 1958, provides that the statement of reasons is to be taken to form part of the decision and to be incorporated in the record. The Agricultural Holdings (England and Wales) Rules, 1948,[16] have not yet been amended to provide for a form of award which incorporates a statement of reasons. In the case of Scotland, the Agricultural Holdings (Specification of Forms) (Scotland) Instrument, 1960,[17] evidently contemplates the incorporation of reasons, when required, in the award, since the Form of Award set out in the First Schedule to the Instrument contains a reminder—" In the case of appointment under the seal of the Secretary of State, the arbiter must, if either party so requests, state the reasons for any determination arrived at." As far as England and Wales are concerned, it would seem that, until the Form of Award is amended, the statement of reasons, when required, should be set out in a separate written document. Since a request for reasons will normally be made before the award is prepared, the statement of reasons will, as a rule, accompany the award. As mentioned above, however, it is possible to make a request for reasons " on " the notification of the award, and in such a case the reasons will have to be given in a statement sent subsequently.

It is perhaps unlikely that arbitrators will give reasons unless requested to do so, in view of the dangers mentioned below of " speaking awards," but, if they do, the reasons should similarly be set out in a separate statement until the present statutory Form of Award is amended to provide for the inclusion of reasons.

[16] S.I. 1948, No. 1943.
[17] S.I. 1960, No. 1337 (S. 69).

It is not thought that the obligation to give reasons extends to the giving of reasons for the exercise of the arbitrator's discretion as to costs.[18]

Error of law on the face of the award

Although the Sixth Schedule to the Agricultural Holdings Act, 1948, contains special machinery which enables the county court to set aside an award because of the arbitrator's legal misconduct, these provisions do not exclude the inherent jurisdiction of the High Court to set aside an award for an error of law appearing on its face, *i.e.*, some erroneous legal proposition which is stated in the award, or a document incorporated therewith, and which is the basis of the award.[19] The award then becomes a "speaking award," and the court may consider it. An award might be set aside on this ground if it appeared on its face to be based on an erroneous interpretation of the contract of tenancy [20] or of the statutory provisions. This jurisdiction obviously becomes of much greater importance since section 12 of the Tribunals and Inquiries Act, 1958, made it the duty of arbitrators appointed otherwise than by agreement to state the reasons for their awards if duly requested to do so.

The recent case of Price v. *Romilly* [21]

The recent decision of Diplock J. in the case of *Price* v. *Romilly* is an interesting illustration of the principles governing this jurisdiction, although in the event it was decided that there was no ground for setting the award aside for any error of law. The case concerned an arbitration relating to section 24 (2) (*d*) of the 1948 Act. The tenant applied by motion to have the award set aside. Both parties agreed that in considering the matter the judge should look not only at the actual award but also at the landlord's preliminary notice under section 24 (2) (*d*) and the notice to quit, although these two documents were not actually incorporated in the award; the award did, however, refer to them. The preliminary notice required the tenant to remedy seven alleged breaches of the terms of his tenancy. The notice to quit was given on the ground of a failure to comply with the preliminary notice. The tenant demanded an arbitration and the arbitrator decided that the notice to quit was properly given. The award dealt specifically with five out of the seven alleged breaches, two minor ones not being referred to. The arbitrator decided that, for one reason or another, the tenant was

[18] *Perry* v. *Stopper* [1959] 1 W.L.R. 415.
[19] *Re Jones and Carter* [1922] 2 Ch. 599; *Price* v. *Romilly* [1960] 3 All E.R. 429.
[20] For an example, see *Maxwell-Lefroy* v. *Bracey* [1956] E.G.D. 305.
[21] [1960] 3 All E.R. 429. The decision was never in much doubt; counsel for the landlord were not called upon to argue.

not at fault as regards four of these five, but he found that he was at fault as regards one item—he had failed to comply with a requirement that he should clean out a ditch. He had thus failed to comply with part of the preliminary notice, but this part was not *de minimis*. The tenant's main argument in favour of the motion to set aside the award was that it disclosed an error of law on its face, the proposition, namely, that *partial* failure to comply with a preliminary notice was sufficient to enable the landlord to take advantage of section 24 (2) (*d*) and serve a notice to quit which excluded the tenant's right to give a counter-notice under section 24 (1). In rejecting this argument, therefore, Diplock J. decided a point not previously the subject of a High Court decision.[22] It may thus be accepted now as clear law that such a partial failure, provided that it is not *de minimis*, will bring section 24 (2) (*d*) into play.

Another point about which Diplock J. expressed an opinion in *Price* v. *Romilly*, although the point was, strictly speaking, *obiter*, was that if a tenant remedies a breach before the date of the giving of the notice to quit, but after the date mentioned in the preliminary notice, the landlord can nevertheless take advantage of section 24 (2) (*d*). The opening words of section 24 (2) (*d*), "At the date of the giving of the notice to quit," do not give the tenant any *locus poenitentiae*. Once the date fixed for the preliminary notice has expired, the tenant cannot "comply" with it by any subsequent action. Here again Diplock J. supported the view taken in a previous case by a county court judge.[23] There was, however, nothing on the face of the award to show what view the arbitrator had formed on this point of law, and the point, therefore, although taken by the tenant, did not really arise in these proceedings.

Diplock J. emphasised the fundamental principle that a motion to set aside an arbitrator's award under this heading can only succeed if the applicant can show that the award itself, or one of the other documents at which the court is entitled to look, discloses on its face an error of law which is the basis of the decision. The court cannot look beyond the face of the record. It cannot, for example, receive any evidence tending to show that the arbitrator was guilty of errors of law that the record does not reveal. The principle is the same as that which applies to certiorari proceedings brought to quash a decision of an inferior court for error of law apparent on the record. Thus in the recent case of *R.* v. *Agricultural Land*

[22] It was, however, decided in the same sense by the county court judge in *Edmunds* v. *Woolacott* (1959) 109 L.J. 204 (more fully reported in the *Journal of the Chartered Land Agents' Society for March* 1959, at p. 113).

[23] Judge Paton in *Edmunds* v. *Woolacott;* see last note. See also the first article in this series (1960) 24 Conv.(N.S.) p. 33 and p. 35.

Tribunal for the South East Area, ex p. Bracey,[24] a Divisional Court refused, in certiorari proceedings, to allow affidavit evidence tending to show that the Agricultural Land Tribunal had wrongly taken into consideration matters which arose in " without prejudice " negotiations, there being nothing on the face of the record to show that the negotiations were without prejudice.

Legal misconduct of arbitrator: award made too late

A recent Scottish sheriff court case illustrates the entirely different jurisdiction of the courts to set aside an award on the ground of the arbitrator's " misconduct." This jurisdiction is vested in the county court in England and Wales and in the sheriff court in Scotland. It has often been said that the word " misconduct " in this connection does not necessarily connote any moral turpitude. Legal misconduct in an arbitrator ranges from something in the nature of corruption or dishonesty on the one hand to a mere technical irregularity involving not the slightest shadow of moral blame on the other. In the Scottish case of *Halliday* v. *Semple* [25] the misconduct alleged was in fact purely technical, namely, the failure of the arbiter to make and sign his award within the statutory time limit. (This time limit is two months of his appointment in Scotland, forty-two days in England and Wales.[26] It can be extended in Scotland by the written agreement of the parties or by an order of the Secretary of State; in England and Wales only by an order of the Minister of Agriculture, Fisheries and Food.) The arbiter in this case had made his award seven days too late, there having been no extension of the time allowed. It was held by Sheriff Milne that this was legal misconduct and he set the award aside. He rejected as unsound a contention that the award should not be set aside unless the complainer was able to show that he had suffered prejudice or that injustice was done.

Legal assistance for the arbitrator

One question about which any lawyer who is likely to be consulted upon agricultural holdings matters should be fairly clear is the extent to which an agricultural arbitrator may obtain legal assistance without the consent of both parties. As solicitors are sometimes consulted at short notice in regard to matters which have arisen in arbitrations, it is advisable to have in mind the rules which

[24] [1960] 1 W.L.R. 911.
[25] (1960) 110 L.J. 1960; 1960 S.L.T. (Sh.Ct.Rep.) 11.
[26] See para. 8 of the Sixth Schedule to the Agricultural Holdings (Scotland) Act, 1949; *cf.* para. 13 of the Sixth Schedule to the Agricultural Holdings Act, 1948.

appear to be laid down by the cases—mostly rather old authorities. These may be formulated as follows:

(a) If the arbitrator obtains the consent of both parties there is no special difficulty. With such consent the arbitrator may obtain legal assistance on any points which arise in the course of the arbitration and may even make arrangements for his legal adviser to sit with him during the arbitration. In order to avoid any difficulty it is, therefore, important to obtain the parties' consent if, for example, it is proposed to take counsel's opinion on some points of law which are in issue or if it is proposed to ask the arbitrator's solicitor to be present at the hearing.

(b) It seems to be clearly established that the arbitrator may, without the parties' consent, obtain legal assistance for the purpose of framing his award.[27] This refers to assistance in framing a decision made by the arbitrator; it does not cover assistance in arriving at the decision. The need for assistance in the framing of awards may become greater as the result of section 12 of the Tribunals and Inquiries Act, 1958, as the giving of unsound reasons for a perfectly sound decision may lead to a motion to set aside the award.[28]

(c) Although not so clearly supported by authority, it seems that an arbitrator would be entitled, without the parties' consent, to seek legal assistance about the procedure to be followed in the arbitration and the general rules of evidence.[29]

(d) It also seems that an arbitrator may, without the parties' consent, obtain legal advice about the general principles of law which are relevant to the case, as distinct from the actual issues of law which arise in it.[30]

(e) The next rule is really implicit in the last. An arbitrator should not, without the parties' consent, obtain legal assistance in regard to the actual issues of law in the arbitration.[31] This probably includes questions as to the admissibility of evidence tendered to the arbitrator.

(f) The last rule is also a negative one. The arbitrator must not, without the parties' consent, arrange for his legal adviser to sit with him for the purpose of advising him during the

[27] *Threlfall* v. *Fanshawe* (1851) 1 L.M. & P. 340; *Galloway* v. *Keyworth* (1854) 15 C.B. 228; *Re Underwood and the Bedford and Cambridge Ry.* (1861) 11 C.B.(N.S.) 442; *Re Collyer-Bristow & Co.* [1901] 2 K.B. 839.

[28] See above, p. 476.

[29] See *Russell on Arbitration*, 16th ed., p. 134.

[30] *Louis Dreyfus & Co.* v. *Arunchala Ayya* (1930) L.R. 58 Ind.App. 381.

[31] *Ellison* v. *Bray* (1864) 9 L.T. 730.

hearing. This is an important rule, because solicitors are sometimes invited to assist an arbitrator in this way. The cases on this subject need careful reading. It is submitted that neither *Threlfall* v. *Fanshawe* [32] nor *Baker* v. *Cotterill* [33] are authorities for the proposition that the arbitrator is entitled to insist on his legal adviser sitting with him without the parties' consent and that *Proctor* v. *Williamson* [34] is a definite authority against it. A solicitor who is invited to sit with an arbitrator should, it is suggested, advise the arbitrator that this may properly be done only with the consent of the parties and that, if the parties do not consent, the idea should be abandoned. In *Proctor* v. *Williamson* [34] an arbitrator insisted on his solicitor sitting with him despite the objection of one of the parties. The objecting party withdrew from the proceedings and the arbitrator continued the hearing *ex parte*. His award was set aside for misconduct. In the course of his judgment Williams J. said: "When the parties agreed to have their dispute settled by a lay arbitrator, I think either of them had just ground for remonstrance when they found that a legal gentleman was to be present throughout the proceedings for the purpose of regulating the conduct of the arbitration."

Some of these rules may seem arbitrary. They are, however, derived from the important general principle that an arbitrator must not delegate his function except in so far as the parties have sanctioned such delegation. A lay arbitrator who takes legal advice on specific matters of law arising in the arbitration would in effect be delegating the decision of these questions to his legal adviser, since he has no means of exercising an independent judgment on such matters. Unless he takes legal advice on the legal advice, which might go on *ad infinitum*, he is bound to take the advice tendered. This, however, is delegation.

[32] (1851) 1 L.M. & P. 340.
[33] (1849) 7 D. & L. 20.
[34] (1860) 8 C.B.(N.S.) 386.

PURCHASING A MAISONETTE LEASE BY LESSOR TO HIMSELF—GOOD LEASEHOLD TITLE

By Edward F. George, ll.b., Solicitor

Recently, acting for a purchaser of a maisonette from a well-known property company, we were told that the property had an unexpired lease of approximately 990 years to run at a ground rent of £15 per annum. This maisonette was one on a large estate and we looked forward to seeing some model conveyancing. Our interest was increased when we were told that the title to the lease was registered, but we were rather taken aback when we saw the contract, for the lease to be assigned in part to the purchaser was a lease by the freeholders to themselves and comprised all the maisonettes on the estate. The purchaser was being offered a good leasehold title. It subsequently appeared that the lessors' freehold title was registered as absolute. The vendors' solicitors were quite willing to supply an authority to inspect the freehold title.

When we raised some objections to the title, at first mildly and then more insistently, we were informed that the title had been accepted by a number of solicitors, including solicitors acting for building societies. They had also wanted, like us, to see the freehold title, but they were unconcerned that the lease was by the lessors to themselves, nor did they intend to apply for absolute (instead of merely good leasehold) titles on completing the purchases. We have heard it said on more than one occasion that building societies dislike lending on the purchase of flats because of the legal difficulties, which however are rarely particularised. Yet apparently they would cheerfully lend on a lease by A to A, registered with a good leasehold title, which, as will be seen, the Land Registry would not convert to an absolute title.

It is perhaps worth considering this title in some detail, for, although the particular facts are unusual, there is a number of points of general interest, particularly with regard to the registration of a leasehold title. Can A grant a lease to himself? If so, are the covenants binding? Does the fact that the lease is registered make any difference? What is the effect of a good leasehold title? Where a vendor is entitled to a lease of premises, is an assignment of the lease of part only of the premises a satisfactory manner of purchasing?

Can a Lessor Grant a Lease to Himself?

At common law a purported conveyance by a grantor to himself was void and, indeed, it needed legislation for a grantor to convey to himself and another as joint tenants. Various devices existed to get round the rule, but they have been rendered unnecessary by section 72 (3) of the Law of Property Act, 1925, which provides:

"After the commencement of this Act a person may convey land to or vest land in himself."

Instances of the use of this statutory power come readily to mind: an entailed interest may be barred by a conveyance by the tenant in tail to himself in fee simple; a personal representative, who is the residuary devisee, may assent to the vesting of land in himself. Nevertheless, usually when the legislature has made provision for a person to vest an estate in himself, it has done so by authorising the use of a unilateral declaration; for example, in the case of compulsory acquisition, a deed poll [1]; in the case of enlargement of a long term of years into a fee simple, by a deed of declaration [2]; and in the case of a strict settlement by the owner in fee simple "it shall be sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate." [3] Indeed, an assent by a personal representative in favour of himself is more in the nature of a declaration than a conveyance.

"Conveyance" is very widely defined by section 205 of the Law of Property Act: unless the context otherwise requires, it "includes a mortgage, charge, lease, assent, vesting declaration, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will"; and "convey" has a corresponding meaning. Prima facie, then, a person can demise land to himself and there is at least one clear statutory example introduced by the 1925 legislation. By section 68 of the Settled Land Act, a tenant for life may grant a lease of the settled land to himself.[4] True, the trustees exercise the powers of negotiating and completing the transaction but nevertheless it is the tenant for life who is technically the lessor and lessee, the trustees exercising their powers "in the name and on behalf of the tenant for life."

If a testator by his will gave A an option to take a lease of certain land and appointed A his executor it can hardly be doubted that A could exercise the option and become his own lessee. Although it seems clear that in certain circumstances a person may grant a lease to himself, it by no means follows that he may do so in

1 Lands Clauses Consolidation Act, 1845, s. 75.
2 Law of Property Act, 1925, s. 153 (6); and see s. 88 (3).
3 Settled Land Act, 1925, s. 4 (2), proviso.
4 The Settled Land Act, 1890, s. 12, did not extend to leases.

all circumstances. It is reasonable to suppose that section 72 (3) of the Law of Property Act, 1925, does not alter the substantive law but merely deals with conveyancing mechanics. The common law rule is *nemo potest esse tenes et dominus*.[5] Furthermore, if a lessor purports to grant a lease to himself in the same capacity, it would appear to become stillborn, for merger as a satisfied term would forthwith occur.[6]

It is submitted therefore that a person cannot grant a lease to himself in the same capacity. Before passing on to the question of covenants, we may mention that the void lease may have some effect as a result of registration,[7] and that it may become validated under section 65 (2) of the Law of Property Act, 1925. This section provides that "A conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance, shall operate as a reservation, unless a contrary intention appears." So, if A purports to grant a lease to A and then conveys the freehold to B subject to the lease, the lease will take effect, and it would seem that the covenants in the lease would also become effective. If the leasehold interest were sold first, the lease would apparently become validated on the sale of the fee simple subject to the lease but it may be doubted whether any of the covenants would be binding personally on the lessor or lessee.

The rule that a plaintiff cannot also be defendant in the same suit, though interesting, is a red herring so far as concerns the validity of the lease.

Can a Person Covenant with Himself?

It is well settled that at common law a person cannot covenant with himself either alone or jointly with another.[8] In *Napier* v. *Williams*[8] some trustees, pursuant to a special power in a will, granted a lease to one of themselves. It was held that, although the lease was valid, none of the covenants were personally binding. They were not totally ineffective: the lessee, claiming the benefit of the lease, could only do so on the footing that he was subject to the burden of the lessee's obligations, in accordance with the principle made more familiar recently in *Halsall* v. *Brizell*.[9]

The common law rule has been altered by section 82 of the Law of Property Act, 1925, which reads as follows:

[5] See Woodfall (25th ed.) at p. 979.
[6] Law of Property Act, 1925, s. 5 (1).
[7] See *post*, p. 490.
[8] *Napier* v. *Williams* [1911] 1 Ch. 361; *Ellis* v. *Kerr* [1910] 1 Ch. 529; *Boyce* v. *Edbrooke* [1903] 1 Ch. 836.
[9] [1957] Ch. 169.

"(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

"(2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more persons, but without prejudice to any order of the court made before such commencement."

It is clear from the words of the section that the draughtsman studiously avoided legalising a covenant by a person with himself alone. It is true that there is at least one statutory exception: a tenant for life may deal with himself, and the covenants entered into are expressly made enforceable at the instance of the trustees.[10]

In the vesting deed in Schedule I to the Settled Land Act, 1925, form 2, the settlor "as settlor" declares that the land settled is vested in himself as tenant for life, and it has been suggested that the words "as settlor" are only inserted so as to import the implied covenants for title, but it is surely putting a very heavy burden on the words to infer a wholesale revision of section 82.

It is submitted that it is clear that even if the bare term of years granted by the lease under consideration vests in an assignee of the lease, neither the lessor nor the lessee is personally bound by the covenants (except where the freehold reversion has been conveyed subject to the lease prior to the assignment of the lease [11]). The lessee could be made indirectly liable under the rule in *Halsall* v. *Brizell*,[12] but there seems no ground for applying the principle to the lessor's covenants; and, of course, the proviso for re-entry falls with the covenants, except for non-payment of rent.

Does Registration of the Lease have any Effect?

The majority of substantive applications for registration of leasehold interests is for good leasehold title only, but there is a growing number of applications for absolute title. Leasehold titles which are registered nearly always have an appreciable capital value because of their length and, wherever possible, a practitioner should seek an absolute title. It is worth considering the effect of registration rather carefully. The effect of registration of a lease with

[10] Settled Land Act, 1925, s. 68 (2), *supra*.
[11] *Ante*, p. 486.
[12] [1957] Ch. 169.

absolute title is to vest in the registered proprietor the possession of the leasehold interest described, with all implied or expressed rights, privileges and appurtenances attached to such interest, subject to:

(i) all implied and express covenants, obligations, and liabilities incident to the registered land;

(ii) the incumbrances and other entries (if any) appearing on the register;

(iii) such overriding interests as affect the registered land (unless the contrary is expressed on the register); and

(iv) (in the case of the first proprietor) certain minor interests.[13]

The effect of registration with good leasehold title is the same with a very important exception, that the registration does not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease.[14]

If the lessor's title is unregistered, a lessee can obtain an absolute title by proving the lessor's title just as on the registration of the freehold. In most cases of "sales" of flats effected by the grant of leases, and in many other cases where substantial premiums are being paid, the vendor is willing to deduce his title, and, indeed, a purchaser today will usually require a good explanation before he forgoes satisfaction as to the vendor's title. When a lessee with an absolute title comes to sell, he is able to prove (i) that the lease was validly granted and (ii) what incumbrances, *e.g.*, restrictive covenants, affect the title. Registration with absolute title will not show (i) that the covenants in the lease are valid or (ii) that the lease is still valid. For example, the lease may have become voidable for breach of covenant. If consent to an assignment is necessary, the Land Registry make no inquiry on the point on the transfer of the lease, so that the mere fact that the transferee is registered as proprietor is no evidence at all that the lessor's licence to assign was obtained. If the lessee is merely registered with a good leasehold title, a purchaser from him not merely has to satisfy himself on these two points, but he also runs the risk that the lease may not have been valid originally. The lessor may have needed consent from a mortgagee to grant the lease. The mortgagee may well be aware that the lease was granted, but mere inaction on his part, even with knowledge, does not make the lease binding on him, with the result that the lease may be struck down, even years after it was granted.[15] Again, in the case of flats or maisonettes, the lessor may have granted rights over property not belonging to him. There

[13] Land Registration Act, 1925, s. 9.
[14] Land Registration Act, 1925, s. 10.
[15] *Taylor* v. *Ellis* [1960] 2 W.L.R. 509.

may be restrictive covenants binding the freehold title, and thus the leasehold as well,[16] of which the lessee does not know.

When the lessor's title is already registered the position is not the same. By section 18 of the Land Registration Act, 1925, a registered proprietor has power to grant a lease of registered land or any part thereof and, if the lease exceeds twenty-one years (*not* forty years as in the case of land of which the lessor's title is not registered), the lessee must not merely have the lease noted against the lessor's title,[17] but he must also obtain a substantive registration in respect of it.[18] Section 20 (1) provides that, where a freehold estate is registered with an absolute title, a disposition of the registered land or of a legal estate therein, including a lease thereof, for valuable consideration, " shall, when registered, confer on the transferee or grantee an estate in fee simple or the term of years absolute or other legal estate expressed to be created in the land dealt with," together with all rights, privileges, etc.[19]

If a lessee wishes to have his lease noted against his lessor's title he can do so without the consent of the lessor and without producing the land certificate, if it is at a rent without a fine.[20] If he wishes to apply for substantive registration the lessor's certificate must be lodged in the registry.[21] When the lessee applies for substantive registration with good leasehold title only, it will be appreciated that the registry have before them the lessor's title. They know whether the lessor has power to grant the lease or not, *e.g.*, there may be a restriction entered prohibiting the grant of a lease, or the consent of some person may be required. Are the registry obliged to satisfy themselves that the lease is validly granted?

The view of the registry is that the Chief Land Registrar is undoubtedly justified in granting a good leasehold title in respect of any deed which on its face appears to be a lease for a term of years absolute in possession even though, owing to facts not known to him, the demise happens to be invalid, or in some respects ineffectual. Thus, for example, if the instrument of lease has been forged, or brought into being by fraud or mistake, or undue influence, the Chief Land Registrar cannot possibly be aware of the defect. Nevertheless, if the deed appears to be drawn and executed in normal form he cannot possibly refuse to grant a good leasehold title. Moreover, except in the case of a lease which happens to be a

[16] *White* v. *Bijou Mansions* [1938] Ch. 351.
[17] Land Registration Act, 1925, s. 48.
[18] Land Registration Act, 1925, s. 19 (2); Curtis & Ruoff, 513.
[19] There are corresponding provisions dealing with the position where the grantor is himself a lessee: s. 23.
[20] Land Registration Act, 1925, s. 64 (1) (*c*); and see s. 48 (2), proviso.
[21] Land Registration Act, 1925, s. 64 (1) (*a*).

disposition of registered land, he has no means of knowing whether, at the time of the grant of the lease, the estate of the lessor was subject to a mortgage or charge which contained (either expressly or by implication) provisions depriving the lessor-mortgagor of the right to grant a lease, or limiting his power to do so without the consent of the mortgagee. Furthermore, in the case of a sub-lease of unregistered land, he could never with certainty know of the existence of the head lease and, even if he suspected one existed, he would have no means of knowing whether it contained any kind of restraint upon, or prohibition against, alienation, nor whether any necessary consent thereunder had been obtained. Yet in all these cases not only is the Chief Land Registrar entitled to grant a good leasehold title without inquiry into the powers of the lessor to grant the lease, but if he were to make any kind of inquiry into those powers his action could not be justified under the Statute, would be rightly resented by the legal profession as a needless requisition, and would inevitably hinder the smooth flow of business.

In short, although under section 8 of the Land Registration Act, 1925, a good leasehold title is not to be granted "until and unless the title to the leasehold interest is approved by the registrar," section 10 makes it clear that in order to grant that class of title his approval does not have to extend to the instrument of lease itself.

The wording of the former section covers those cases in which he is asked to register a good leasehold estate after some devolution of the title has occurred, so that when, for example, an application is made to register a leasehold interest on an assignment of the term, he must approve the title deduced from the original lessee to the applicant-assignee before granting a good leasehold title.

This, then, is the registry's attitude; but is it correct? When V sells a lease of unregistered land to P, his obligation is to prove the title to the lease, but not to the freehold reversion.[22] This does not mean that V can produce a forged lease or an instrument that is not a lease at all and require P to accept it. In the case out of which this discussion arises, a lease from A to A, the registry registered the lease with a good leasehold title. If the freehold title had been unregistered the effect of registration would have been "to vest in [the registered proprietor of the leasehold interest] the possession of the leasehold interest described,"[23] subject to the qualifications mentioned above.[24] With respect, the question of forgery, fraud and the like has nothing to do with it: the position is the same whether a forged instrument relates to a freehold or a

[22] Law of Property Act, 1925, s. 44 (2).
[23] Land Registration Act, 1925, s. 9.
[24] *Ante*, p. 488.

leasehold title, and is unaffected by the question whether application is made for good leasehold or absolute leasehold title.[25] Again, whether the applicant applies for a good leasehold or absolute leasehold title, he seeks to register a lease and not something falling short of a lease. The effect of registration is to give registry approval to the fact that it is a lease.

In our particular case, the freehold title was itself registered and the position in such a case is governed by section 20. In the words of the section, the disposition, when registered, conferred on the registered lessee the term of years absolute expressed to be created in the land. In our opinion there is good ground for contending that the registry's view set forth above is incorrect. First, they do not distinguish between cases where the lessor's title is registered and those where it is not. In the former the lease is made in exercise of the powers contained in section 18 and the registration is formal approval that the instrument is in order, subject only to any qualification arising out of the reversionary title, including the lessor's power to grant the lease. If the lessee applies for a good leasehold title, the registry will not have to consider such qualifications, *e.g.*, any limitation on the power to grant the lease by reason of a mortgage, any restrictive covenants. Secondly, whether the reversioner's title is registered or not, it is submitted that the registry must satisfy themselves that the instrument is valid in the sense that it is a lease and not, *e.g.*, a licence, and is not a forgery.[26] When, therefore, the registry intimated that they would not register the lease from A to A with an absolute title because of its doubtful validity, it is suggested that they erred. Having granted a good leasehold title, section 20 vested the term of years in the lessee, and to convert it into an absolute title all that was needed was proof of the lessor's title to grant it.[27] In fact, the difficulty was in due course overcome by a supplementary instrument.

Before leaving this aspect, we might mention that some solicitors acting for lessees or mortgagees from lessees insist on seeing the

[25] An examination of ss. 82 and 83 of the Land Registration Act, 1925, which deal with rectification and compensation, draws no distinction between good leasehold and absolute titles. The difference derives from s. 10 which is confined to the lessor's *title* to grant the lease.

[26] In practice, of course, the registry cannot do this; but compensation will usually be payable: see Ruoff's "Registered Land—The State Guarantee" (1954) 18 *Conveyancer* 130, particularly at p. 145. Compensation is not excluded merely for carelessness or even negligence, but only if the claimant has himself caused or substantially contributed to the loss by his fraud: s. 83 (5) (*a*).

[27] Curtis & Ruoff, p. 319. It should be pointed out that, strictly speaking, conversion appears to be in the discretion of the Chief Land Registrar. The Land Registration Act, 1925, s. 77, provides that in certain circumstances he *may* convert the title. Nevertheless, in the case of a good leasehold title, the only outstanding point on which he needs to be satisfied is the lessor's title to grant the lease.

freehold title, but still register with only good leasehold. It is difficult to understand why. When the lessees (or mortgagees) come to sell they may no longer be able to prove the freehold title. If the freehold has changed hands or a reversionary lease been granted, they no longer have any right to see the reversionary title, for an authority to inspect the register originally given them has ceased to be valid.

Danger of Forfeiture of Principal Lease

Finally, we may mention a point of difficulty which we know has troubled solicitors acting for purchasers of flats. A freeholder grants a lease of property on which in due course is built a number of flats. The vendor of the flats can either assign the lease so far as relates to each flat to each purchaser or he can grant sub-leases to the various purchasers. In the first case flat-owner X may find his title in jeopardy, not because he personally is in breach of covenant but because some other purchaser is. When the main lease is granted with a view to assignment in parts to the various flat-owners, it should provide that the right of re-entry is only to be exercisable in respect of any particular flat for non-payment of the apportioned rent attributable to that flat or for breach of covenant relating to that flat. If such provision is not made, any prospective purchaser should think twice before taking a purchase by way of assignment. It is not sufficient that the court has power to grant relief against forfeiture, for the innocent flat-owners may be quite unable to take over the interests of the guilty so as to ensure that the covenants are performed.

Where the sales are carried out by way of sub-demises the difficulty can be overcome by seeing that there is sufficient margin between the rent reserved by the head lease and those reserved by the sub-leases to ensure the servicing of the head lease.[28] Indeed, where a lease is specifically granted with a view to the erection of flats for sale, it usually stipulates that the improved ground rents should be at least one and a half times, or even twice, that reserved by the head lease.

Conclusions

1. Wherever possible when applying for the substantive registration of a leasehold title, application should be made for an absolute title. In the case of a head lease, where the lessor's title is registered—and this can be discovered by a free official search—

[28] See Leach's "Conveyancing and Valuation" (1959) 23 *Conveyancer* 204, at p. 211.

there should be little difficulty. The lessor need only give an authority to inspect the register and the lessee can satisfy himself that the title is in order. Lessors are usually prepared to give the authority, for they will be lodging their certificates to meet the registration anyway.[29] It is not sufficient to satisfy oneself that the lessor's title is in order, for it may be impossible to prove this later.[30]

In the case of a sub-lease it may not be so easy to obtain registration, for co-operation from the superior reversioners, as well as the sub-lessor, will be needed, but if they are all registered this usually proves to be feasible.

2. Even if a lease is registered with absolute title, it does not mean that the covenants are valid or that they have been performed, and, in particular, it does not mean that any necessary licences to assign have been obtained.

3. An assignment of part of a lease at a premium is not a satisfactory transaction unless the lease specifically limits the power of re-entry so as to be exercisable only in relation to the part assigned for breach of covenant or non-payment of rent attributable to that part.

4. In the case of a sub-demise of part of premises at a premium comprised in a head lease, the improved ground rents of all the sub-leases should leave reasonable margin to ensure the servicing of the head lease.[31]

[29] This is the practice even where not strictly necessary, as to which see *ante*, p. 489.

[30] *Ante*, p. 491.

[31] I am very much indebted to Sir George Curtis and Mr. Theodore B. F. Ruoff, who have read the article and made helpful suggestions, though, of course, they disagree with my views so far as they differ from those of the registry. Mr. Ruoff tells me that there is an appreciable demand today, not only for absolute leasehold titles, but also for conversion from good leasehold to absolute.

THE BUILDING SOCIETIES ACT, 1960

By Richard Scott, b.a., ll.b.(Cantab.), Barrister-at-Law

The Building Societies Act, 1960, is the first major enactment that there has been on building societies for over twenty years,[1] and it is for that reason somewhat inevitable that the Act deals in a piecemeal fashion with a variety of matters that required attention. To discuss specifically each and every section of the Act is a matter for current law annotation and not for an article, and, accordingly, I have thought it best in this article to deal in the main with the first half of the Act. Sections 29 to 55 and the 4th Schedule to the Act are concerned mainly with the internal administration of the society and regulate such matters as contents of the society's rules, requirements for meetings, resolutions and notices, voting, proxies, polls, annual returns, balance sheets, auditor's duties and other matters of a like nature. Building society law has in this respect lagged far behind its counterpart in company legislation, and prior to this Act had contained nothing equivalent to sections 130–146 of the Companies Act, 1948. It has, by way of example, been only by implication necessary for building societies to hold annual general meetings.[2] The law is by this Act regularised on a pattern identifiable with and generally closely following the corresponding provisions in the Companies Act, 1948; but interesting and of practical importance though these sections are, I propose in this article to consider chiefly the remarkable changes in the law contained in sections 1 and 2, and the particularly extensive and far-reaching powers bestowed by the Act upon the Chief Registrar, and to refer briefly to a few other sections which have seemed to me to be of special interest.

Perhaps it might be useful first to mention briefly the background against which the Bill came to be introduced. The introduction of the Bill into Parliament was to some extent an immediate consequence of an election pledge made on behalf of the Conservative party at a time when the affairs of one particular building society were threatening to become an election issue.[3] It must be

1 Since the Buildings Societies Act, 1939.

2 The Building Societies Act, 1874, s. 40, requires an annual account of certain affairs of the society to be prepared and to be sent to the Registrar " within 14 days after the annual or other general meeting at which it is presented." Now s. 33 of the Building Societies Act, 1960, requires a society to hold an annual general meeting in the first four months of each financial year.

3 *Hansard*, House of Lords Official Report for April 12, 1960, col. 1004.

said at the same time, however, that the Bill was in no way a rushed one, unpremeditated for a substantial time previously. The Bill had in fact been the subject of study and of preparation since early 1959,[4] and the final product is an enactment in the preparation at all stages of which considerable co-operation with and assistance from the Building Societies Association was sought. A final consideration necessary to place the Act in its correct perspective is to be found in the remarks of the Economic Secretary to the Treasury which make it clear that the Government have in mind consolidation of the whole area of building society law, and considered this Act necessary to bring the law up to date pending consolidation.[5]

In introducing the many substantive changes in the law contained in sections 1 to 12 the legislature had, it seems, two main purposes in mind. First, they had in mind the desirability of restricting societies to their traditional role in financial affairs in this country—that of providing financial assistance to persons wishing to purchase or build their own houses; and secondly, the necessity of affording a high degree of protection to persons investing their money in building societies is a constantly recurring theme.

Sections 1 and 2 of the Act are directed particularly to the first aim, and section 1 introduces an entirely new concept into building society financial policy. Building societies were at the outset bodies instituted as a co-operative enterprise often by persons living in a particular locality to enable them to obtain financial assistance for the purchase, or more often the building, of houses to live in. Members of the community would invest their money in the society, which lent out sums when available and when required to those members who desired them. Where the number of claimants exceeded the money available it was the practice in many cases for advances to be balloted for. This homely character of societies was in most cases soon abandoned,[6] but societies nevertheless largely kept sight of their traditional function of provision of financial assistance to homeowners; but in the sudden rise of property values and the scarcity of accommodation which have been features of housing in this country since the last war, a small number of societies have turned from this traditional business to the provision of risk capital at high rates of interest for the financing of commercial or speculative building by developers together with other forms of property speculation. Sections 1 and 2 may, therefore, be viewed as an attempt to check this tendency and to prevent

[4] *Hansard*, House of Commons Official Report for June 20, 1960, col. 33.
[5] *Hansard, ibid.*, col. 145.
[6] The Building Societies Act, 1894, s. 12 (1), prohibited for societies established thereafter any balloting for advances.

competition by building societies in fields more suited to banking and finance companies.

Limits of Advances

Section 1, consequently, imposes limits upon the advances which a society may make in any one year to a body corporate, or to an individual, in excess of £5,000 (known in the Act as "special advances"). The relevant limits are expressed in terms of a percentage of the total advances made by the society in the relevant financial year, and are designed to prevent outstanding special advances from exceeding 25 per cent. of the total advances outstanding. The figure of £5,000 which seemed to many members of the House of Commons somewhat low was the figure suggested by the Building Societies Association [7]: power is, however, given to the Chief Registrar with the consent of the Treasury to vary the relevant amount (though not to reduce it below £5,000). It is of interest that the activities of Federal Loan and Savings Associations in the United States have been restricted by a similar device. It is there provided by the Home Loan Owners Act that funds are to be lent on the security of first liens upon houses or combinations of houses and business properties within fifty miles of the home office and that not more than $35,000 may be lent on the security of any one such property, except that not more than 20 per cent. of the assets of the Association may be lent upon the security of other property.

Section 2 of the Act provides an exemption from the limits imposed by section 1 and is a consequence of the dismay with which the scarcity of available accommodation for letting was viewed in the course of debate by members on both sides of the House of Commons. This section gives discretion to the Chief Registrar to exempt from the restrictions of section 1 advances made in connection with the purchase of recently constructed, or the construction of, dwelling houses or flats which are to be made available for renting by tenants. No doubt, the quality of construction of the buildings [8] and the terms upon which they will be rented will be important considerations for the Chief Registrar in exercising this discretion, so that, for example, exemption might not be forthcoming where a high premium is to be charged for the lease, or perhaps, if a long term lease is contemplated. It was, however, stressed in Committee

[7] *Hansard*, House of Commons Official Report for June 20, 1960, col. 150.

[8] An amendment was proposed on the third reading which would have had the effect of requiring the relevant dwelling-houses or flats to be of a certain standard of construction. The amendment, however, was negatived (*Hansard*, House of Commons Official Report for July, 22, 1960, col. 931.)

by the Economic Secretary to the Treasury that this discretion was not intended in any way to provide "rent control by the back door," and it was made clear that a decision as to the reasonable or unreasonable nature of the rent required was not relevant to the exercise by the Chief Registrar of his discretion.[9]

Subsection (2) of section 2 is in some respects a rather strange subsection, and removes a little of the gilt from the gingerbread so far as the lucky society is concerned in whose favour the Chief Registrar has exercised his discretion under subsection (1). Subsection (1) provides for permission to make further special advances than would normally be permitted under section 1. Subsection (2) provides that where advances authorised by the Chief Registrar under subsection (1) have been made, and the percentage of special advances to total advances outstanding lies between 10 per cent. and 25 per cent., the Chief Registrar shall have discretion to allow the society to make further special advances in the following financial year than the normal section 1 limit. Under section 2, therefore, a society may have to seek the Chief Registrar's discretion twice—first, in order to make the advance (having, *ex hypothesi*, exhausted already the usually permitted special advances for that year) and secondly, in order that the advance may not prejudice the society in the amount of special advances to be permitted in the following year. Indeed, discretion may have to be sought an indefinite number of times, since year after year, the advance being still outstanding, the relevant percentage may be between 10 per cent. and 25 per cent., and discretion will have to be re-sought each year.[10] Consequently, a society benefited by discretion exercised in its favour under subsection (1) may be prejudiced unless discretion is exercised in its favour under subsection (2) for each relevant year thereafter. Why it should be necessary for a society to be obliged to seek exemption twice in respect of the same transaction is obscure. Nor is it immediately apparent what circumstances are likely to justify exercise of discretion under subsection (1) and refusal under subsection (2), or, *a fortiori*, to justify exercise of discretion under subsection (2) in one year, and refusal in a subsequent. It also may seem anomalous to the uninitiated that where advances permitted under subsection (1) raise the relevant percentage to over 25 per cent., the society concerned will simply not qualify for relief at all under subsection (2).

[9] *Hansard*, House of Commons Official Report for June 30, 1960, cols. 60 and 61.

[10] "The Chief Registrar may, if he thinks fit, grant to the building society, permission in writing to make special advances in the said following financial year . . .": subs. (2) of s. 2.

Protection of Depositors

The second purpose mentioned earlier—that of protecting persons who deposit money with the society from malpractices on the part of directors and officers of societies—finds expression particularly in sections 4 to 11 and in the wide powers given the Chief Registrar to control the activities of societies. Previous to this Act, the Chief Registrar had had power under section 11 of the Prevention of Fraud (Investments) Act, 1958[11], to make an order prohibiting invitations by or on behalf of the society to invest, lend or deposit money until the order was revoked. The threat of such an order was the most effective means possessed by the Chief Registrar whereby undesirable practices by societies might be checked, and it is of interest that in the Annual Report of the Chief Registrar for 1959, as in previous reports, it was stated that the grounds for initiating investigations, prior to an order under the section, fell into three categories: (a) the unsatisfactory financial position of the society as disclosed by its accounts, (b) the lending of the society's funds on doubtful security and (c) the use of the society's funds for financing companies with which the society's directors were connected. Though these evils are dealt with, to some extent, specifically,[12] the safeguards contained in the Act against malpractices may be seen against that background.

Sections 3, 4 and 5 of the Act are concerned with the formation and initial years of the society. Section 3 requires a minimum of ten persons to found a society,[13] while section 4 (1) requires each of the ten to be issued with shares in the society to the value of £500. The shares are required to be issued upon terms which comply with the requirements of the First Schedule to the Act, which in particular contains clauses providing that the shares shall not be transferred (except by transmission by law) nor the sum of £500 repaid for a period of five years.[14] A certificate from the Registrar that evidence has been produced satisfying him that subsection (1) has been complied with is necessary before the society may commence any business or borrow any money. Section 5 of the Act is even more far-reaching. That section prohibits a society from issuing any advertisement until on application made by the society the Registrar shall have given his permission.

Subsection (2) provides, in effect, that the application may not be made until at least a minimum period of a year (in most cases, the

[11] Previously under the Prevention of Fraud (Investments) Act, 1939, s. 11.
[12] ss. 38–51; s. 14; ss. 52–56 respectively.
[13] The Building Societies Act, 1874, s. 17, requires 3 persons to establish a building society.
[14] Paras. 2 and 3.

period will be in excess of a year) has elapsed since the incorporation of the society. The Second Schedule to the Act contains conditions which must be satisfied in order that permission may be forthcoming (on the other hand, if the conditions are satisfied, the Registrar has no discretion and permission must be forthcoming). To appreciate the significance of this section it is necessary to turn to section 73 (1) in which " advertisement " is defined as meaning " in relation to a building society, an advertisement in any medium inviting business or making known the activities of the building society, and includes in particular a circular or handbill inviting business or making known its activities." [15] It is clear, therefore, that the section prohibits advertisement not only for business which involves borrowing money, but also business which involves the making of advances. The time limit for applications under the section and the conditions in the Second Schedule were inserted into the section after the select committee had made its report in order to specify the requirements necessary for the Registrar's consent. The following passage is taken from the speech by the Government spokesman on behalf of the amendment made on the third reading. " It might be asked how could a building society carry out its functions if it could not seek money from the public. The fact is that many building societies, for their first months, rely on the funds of directors and friends or associates, and the Building Societies Association itself does not consider that to be unreasonable." [16] It appears then that the main purpose of the delay is to prevent undue haste in seeking out the money of the public. But the section goes further, and prevents advertisement for all business. How can a society carry out any mortgage business, for example, without a measure of advertisement? Perhaps a sign stating certain premises to be the offices of the X Building Society might be a sign " making known the activities of the society " and consequently objectionable; perhaps even a letter written in response to a request for information as to the terms upon which the society would be prepared to lend money might be an advertisement " inviting business." At all events the section would seem to go considerably further than necessary for the purpose it was presumably intended to serve.

A provision restricting advertisement for the investment of money for the relevant period was, no doubt, necessitated in part by the provisions of section 25 of the Act. That section requires that a depositor or a person who subscribes for shares in a society shall be

[15] " Invitation to subscribe " received a wide interpretation in *R.* v. *Coulton*, reported in the Report of the Chief Registrar of Friendly Societies for 1954 at pp. 3 and 4.

[16] *Hansard*, House of Commons Official Report for July 22, col. 956.

given a copy of the latest revenue and appropriation account and balance sheet of the society together with a copy of the auditor's report and of the directors' report. Section 39 (1) of the Act requires the directors to lay before the society at the annual general meeting a revenue and appropriation account for the last financial year, and a balance sheet as at the end of that financial year. Section 33 (1) of the Act requires a society in the first four months of each financial year to hold an annual general meeting, but provides that an annual general meeting need not be held in the calendar year in which the society is incorporated. Having regard to the combined effect of these sections it is easy to see why application for permission to advertise for the investment of money should be prevented from being made until after the society shall have held an annual general meeting before which the relevant documents must have been laid. But it is not so easy to see what danger lies in permitting a society to advertise for mortgage business or in any other sense once a certificate under section 4 has been issued by the Registrar.

As a practical point, the assurance was given on the third reading in the House of Commons that the relevant permissions granted under section 5 would be on the file which would be open for inspection at a charge of 2s. 6d. at the Registry.[17]

Appeals

In considering the various and numerous sections of the Act which give to the Chief Registrar such extensive control over building societies, both Houses of Parliament were considerably exercised over the pros and cons of providing for societies some right of appeal against decisions of the Chief Registrar. Despite considerable heart searching no provision for appeal was made,[18] societies being left the general remedy of application to a Divisional Court of the Queen's Bench Division on a writ of certiorari. It is fair to say that the consent of the Treasury is in most cases required to render effective a decision of the Chief Registrar, and that the conditions in section 5 subject to which permission is to be granted were expressly specified so that the discretion of the Registrar might be avoided,[19] and so that societies might have a legal remedy if applications under the section were wrongly rejected.[20] The writ of certiorari remains, however, the only available legal remedy against

[17] *Hansard*, House of Commons Official Report for July 22, col. 958.

[18] s. 8 (3) does provide for an appeal to the High Court or the Court of Session against a direction by the Chief Registrar that the building society pay all or a part of the expenses incurred by the Chief Registrar under that section.

[19] *Hansard*, House of Commons Official Report for July 22, col. 955.

[20] A writ of mandamus would be appropriate and would also be available in the event of wrongful refusal of a certificate under s. 4.

exercise by the Chief Registrar of his discretion, as it was also against orders made under section 11 of the Prevention of Fraud (Investments) Act of 1939 and of 1958, which also contained no provision for appeal. In order that certiorari may be available it is necessary that the order appealed from be made by the executive official concerned in a judicial, or at least a quasi-judicial capacity.[21] There can be no such recourse where the order is made in a purely administrative capacity. This distinction has recently been considered by the Court of Appeal,[22] who were prepared to hold that where the Registrar was obliged to consider representations made to him before making the relevant order, he was acting in at least a quasi-judicial capacity. On this test, of those sections which provide for the Chief Registrar to exercise his discretion in some way affecting a specific society, certiorari may lie against decisions made under sections 6, 7 and 9, but not against decisions made under sections 2 or 10. From decisions under the latter two sections there would seem to be no appeal.

A remedy is available under the writ in general in two circumstances. First, a remedy may be given where the executive official has failed to observe the so-called rules of natural justice. These are rules difficult to define but which include the right of each party to be heard and the right to an impartial tribunal. Lord Parker C.J. commented in a recent case—"I would like to say at once that I always find the expression 'natural justice' very difficult. There is no one code of natural justice which is automatically imported into any procedure of a judicial nature. . . . Each case must depend upon the nature of the function and the exact words of the statute."[23] Failure to observe these rules as a basis for appeal is clearly not often likely to be available to a society. Secondly, a remedy may be given where an error in law appears on the face of the record. For a remedy to be available on this head, it is necessary, *ex hypothesi*, that there be a record. Orders previously made under section 11 of the Prevention of Fraud (Investment) Act of 1939 or of 1958 involved the Registrar in no obligation to state his reasons for making an order, and an appeal on this ground was, therefore, not possible. Accordingly, with a view to strengthening the available procedure under the writ, subsection (6) of section 6 and subsection (3) of section 7 were included by amendment on the

21 *R.* v. *Registrar of Building Societies, ex parte a Building Society* [1960] 1 W.L.R. 669.

22 *Ibid.* The case concerned an appeal against an order made under s. 11 of the Prevention of Fraud (Investments) Act, 1958. *Per* Hodson L.J. "the quasi-judicial capacity may, I think, subsist even though the full form of a judicial enquiry is not there."

23 *R.* v. *Registrar of Building Societies, ex parte a Building Society* [1960] 1 W.L.R. 669 at 676.

third reading in the House of Commons.[24] These subsections require the Chief Registrar to record in writing " the considerations which have led him " to make the relevant order. This is the record which may be attacked by way of certiorari in an appropriate case. Section 9, however, contains no similar provision, and there is accordingly less likelihood of a successful appeal against an order made under that section.

Powers of Registrar

Sections 6 and 7 give the Chief Registrar the most extensive powers, powers in effect of life and death, over societies. Sections 7 and 8 reproduce in the main the provisions of section 11 of the Prevention of Fraud (Investment) Act, 1958, and section 7 gives to the Chief Registrar powers to prohibit advertisement of " all descriptions." [25] An order made is to be expedient " in the interests of persons who may invest or deposit money with the building society," and though the section appears to contemplate advertisements for investors, there is clearly power to prevent advertisement for any purpose whatsoever. Section 6 gives an even more effective weapon to the Chief Registrar, and provides that where expedient in the interests of persons who have invested or deposited or may invest or deposit money, he may prohibit the society from accepting any deposit or subscription or from borrowing any money.[26] It is of note that persons whose interests are to be considered include present investors and depositors, but while their interests, or at least the interests of those liable to make subscriptions, might be served by the prohibition from accepting subscription, it is difficult to see how a prohibition against accepting deposits or against borrowing could aid them. It is not possible under the section for the Chief Registrar to apply subsection (2) to a society otherwise than *in toto*, and at first sight it is not apparent on the one hand how a prohibition against accepting subscriptions (subs. (2) (*b*)) could be in the interests of future investors or depositors nor, on the other hand, how a prohibition against borrowing or accepting deposits (subs. (2) (*a*)) could be in the interests of present investors or depositors.

Section 9 of the Act gives power to the Chief Registrar to check an abuse specifically mentioned by Lord Hailsham when he introduced the Bill into the House of Lords.[27] The abuse arises from the practice whereby small old-established societies have been bought up by persons who then use the name and repute of the society to

[24] *Hansard*, House of Commons Official Report for July 22, col. 959.
[25] subs. (1).
[26] subs. (2).
[27] *Hansard*, House of Lords Official Report for April 12, col. 1000.

commence speculative financing. This has been a practice always liable to attract adversely the attentions of the Registrar, and section 9 (which applies only to societies with assets not exceeding £100,000 in value) gives power to the Chief Registrar to require in those circumstances evidence that the directors of the society have, in effect, complied (as a body) with the requirements that they would have had to comply with under section 4 (1) had they newly formed a society. Section 10 of the Act gives the Chief Registrar power with Treasury consent "to make regulations with respect to the matter and form of any kinds of communications which a building society may issue or cause to be issued." Section 11 gives power to the Chief Registrar with similar consent to make orders regulating the investments which societies shall be authorised to hold. Section 13 gives to the Chief Registrar far wider powers than he previously held under section 5 (5) of the Building Societies Act, 1894, to order an investigation of the affairs of the society or to call a special meeting of the society, while section 15 gives him power to amend the list of classes of additional security which may be taken into account by a society when making an advance. Sections 21, 33 and 56 provide further powers for the Chief Registrar over building societies, and the vast encroachment of the Executive into the affairs of societies which this Act represents is certainly its most striking feature. Whether or not this is harmful is contentious and is perhaps to some extent a matter of political theory not here relevant. An analogy may be drawn with practice in the United States where executive control over Federal Loan and Savings Associations is even more extensive than that now given to the Chief Registrar.[28] Suffice it to say, that provided the powers given to the Chief Registrar are not used to stifle individual enterprise by societies or to inflict a uniform policy, particularly upon smaller or starting societies, then it will be difficult to object to them.

Powers of Investment

Section 11 of the Act provides for a more flexible approach to investment powers for building societies, but seems to carry with it the germs of future difficulty. Societies previously had been virtually restricted to trustee investments by section 25 of the Building Societies Act, 1874 and section 17 of the Building Societies Act, 1894;

[28] Home Loan Owners Act: "In order to provide local mutual thrift associations in which people may invest their funds and in order to provide for the financing of homes, the Board [*i.e.*, the Federal Home Loan Bank Board] is authorised under such rules, regulations etc. as it may prescribe to provide for the organisation of Associations to be known as Federal Savings and Loan Associations . . . ." and "Rules made by the Board have the force and effect of law and are binding on an Association and its board of directors."

section 11 provides that the Chief Registrar with Treasury consent may by an order contained in a statutory instrument prescribe authorised investments for societies. The section then continues thus: " a building society shall not invest any part of the funds of the building society which are not immediately required for its purposes in a manner which is not authorised by an order under the subsection." This is the passage which appears to be potentially a troublemaker. Section 25 of the 1874 Act is worded " a society under this Act may from time to time as the rules permit, invest in . . ." etc. Section 17 of the 1894 Act is worded, " The powers of investment under section 25 of the Building Societies Act, 1874, shall include power to invest in or upon any security in which trustees are for the time being authorised by law to invest." In neither section is there to be found any express prohibition against investment in unauthorised investments. Consequently an unauthorised investment in the past, while it has been *ultra vires* the society, and has involved the directors in personal risk, has not been strictly illegal. Now, however, unauthorised investments are expressly prohibited, and would appear to have been made illegal. The question which arises is whether or not a society on whose behalf directors have made unauthorised investments can recover by action the money so invested—or any dividend that might in the normal way be due. So far as it concerned friendly societies the problem was discussed in *Re Coltman, Coltman* v. *Coltman*,[29] where there are at least some dicta by Jessel M.R. to suggest that even where the investment has been expressly prohibited (which was not the case before him) the money would still be recoverable. Brett L.J. and Lindley L.J. though concurring in the main point of the case do not appear prepared to go so far. The difficulty is discussed briefly in Wurtzburg's *Building Society Law*,[30] where the editor takes the view that a distinction between an unauthorised and an expressly prohibited investment is relevant to building society law. If this is right, societies entering into unauthorised investments are likely to be far more seriously prejudiced (apart from the statutory penalties in subsection (6)) than those doing likewise prior to the Act. It seems extremely doubtful that such a result, though it seems to follow from the wording of the section, could have been intended by the legislature.

Guarantee of Societies

A section of the Act which caused some members of the House of Commons puzzling moments is section 21.[31] That is a section

[29] (1881) 19 Ch. 64.
[30] 11th ed., at p. 37.
[31] *Hansard*, House of Commons Official Report for July 12, col. 218.

which provides for two or more societies, with or without an insurance company, to make arrangements to create a guarantee fund to meet losses incurred by investors in the societies. The Economic Secretary to the Treasury said in debate that the provision was intended to be confined to dealing with the position that might arise when a society became insolvent. He then went on to mention, as one of the matters under subsection (4) with which the Chief Registrar would be concerned in approving any arrangement, possible prejudice to the investors of one society. It is difficult to see how a society, once it had begun to be in difficulties, could enter into any arrangement with a society not in such difficulties (which necessarily would be the only sort of society with whom it would be any use entering into an arrangement) that the Chief Registrar could approve. It is of interest that in discussion on this section in committee the possibility of a general guarantee fund for societies was suggested,[32] and it is at least conceivable that with the general advance of executive intervention in the sphere of building societies, the present Government objections to such a scheme might fall away.

Valuations and Miscellaneous

Section 14 is likely to be of special interest to smaller societies, and was the subject of considerable debate when considered in committee.[33] The section (*inter alia*) prohibits the valuation of property, upon which an advance is to be made, by directors, a manager or secretary of the society. Since this prohibition would have borne hardly upon many directors of small societies, who have been long accustomed to act as valuers for their societies, a proviso was inserted on the third reading to the effect that the practice of director valuation might be continued for ten years provided the relevant director be authorised so to act by special resolution at successive annual general meetings. By section 25, the society is required to provide for each depositor or investor in the society a copy of the latest revenue and appropriation account and balance-sheet of the society (together with a copy of the auditor's report and the directors' report), and the section in that way ensures that those persons be forewarned of the financial position of the society and fully acquainted with its affairs. Section 56 prescribes certain matters to which the attention of members of societies must be drawn on a proposed union or transfer of engagements. These include in subsection (1) (c) any compensation for loss of office or other consideration to be paid to directors or other officers of the society.

32 *Hansard*, House of Commons Official Report for July 12, 1960, cols. 218 and 219.
33 *Hansard*, House of Commons Official Report for July 7, 1960, cols. 166 to 194.

Prior to the Act, directors of societies, despite the absence of any statutory provision, have been under a duty of full disclosure in respect of these benefits.[34] This provision has not substantially added to the disclosure the director is required to make though no doubt it will materially assist its enforcement.

Generally, this Act is most welcome. It has provided needed safeguards against certain abuses, it regulates many facets of the relationship between member and building society, and between society and director, it reforms various anomalies previously existing in building society law and practice,[35] and it makes a positive attempt to divert building society money into channels beneficial to the community. The Act has inevitably, however, made more difficult the task of the practitioner and has immensely complicated administration by societies of their affairs. For these reasons, it is to be hoped that the Government promise of consolidation will come to be implemented before very long.

[34] *General Exchange Bank* v. *Horner* (1870) L.R. 9 Equity 480, at 488 *et seq.* *per* Lord Romilly M.R. "The acceptance of a sum of money . . . was a distinct pecuniary benefit which they were not justified in taking unless with the sanction and by the consent of their *cestuis que trust*, the shareholders of the company," and "he cannot in my opinion retain to himself a pecuniary benefit obtained by him in his character of manager not known to, and not sanctioned by, the shareholders who employed him."

[35] s. 22 (1) allows a person to become a member without holding a share in the society. Many societies had previously used the cumbersome procedure of requiring advanced members to take shares in the society in order that they might be bound by the rules of the society. This will no longer be necessary.

NOTES OF RECENT CASES

1. *REAL PROPERTY AND CONVEYANCING*

By Gareth H. Jones, Barrister-at-Law

Cotterell v. *Price* [1960] 3 All E.R. 315

Mortgage—equity of redemption—ability of equity of redemption to exist independently of mortgage—Law of Property Act, 1925, s. 95 (2).

Bankruptcy—limitation of actions—effect of notice of election to trustee in bankruptcy—Bankrupcy Act, 1914, *s.* 7 (2).—This case, although complicated by the provisions of the Bankruptcy Act, 1914, confirms the apparently obvious point that an equity of redemption is incapable of existing in gross.

The mortgagor, the third defendant, created two mortgages on the same piece of property. The first mortgage became vested in the first and second defendants and the second mortgage in the plaintiffs. The mortgagor became bankrupt in 1938. The plaintiff's claims against the mortgagor were admittedly statute-barred, but he claimed as against the remaining defendants the right to redeem the first mortgage.

The argument of the plaintiff's counsel was not lacking in subtlety. He submitted first that the plaintiff's right to redemption was barred only by section 12 of the Limitation Act of 1939 and that that section, which barred any action to recover the land after twelve years against a mortgagee in possession, was inapplicable because the first defendant had never been in possession. Accordingly under section 95 (2) of the Law of Property Act, 1925, he was an incumbrancer entitled to give directions to the first mortgagee with regard to the redemption of the first mortgage.

Buckley J. was quick to detect the fallacy of the argument. He said that "on the second mortgagee's rights against the mortgagor becoming statute-barred, the second mortgagee lost all estate and interest in the mortgaged property. . . . It seems to me that the result was that he lost his status as a mortgagee. An equity of redemption is an incident of the status of mortgagor or puisne incumbrancer having the right to redeem the higher mortgage. It is part of the machinery provided by equity to enable anyone who is mortgagor of land, or who stands to any extent in the shoes of the mortgagor of land, to redeem the pledge of the land. The very term 'equity of redemption' suggests that that is the character of the right. The equity of redemption exists for the purpose of assisting him who has a right to redeem the land, to get the land back. . . . Therefore it seems to me that counsel's submissions on this part of the case are fallacious because they assume (wrongly as I see it) that the equity of redemption can survive in gross the demise of the second mortgage as an enforceable mortgage against the mortgagor."

Buckley J. also dismissed the argument based on section 7 (2) of the Bankruptcy Act, 1914, namely, that by reason of the service of a

statutory notice in 1958 against the trustee in bankruptcy to elect whether the trustee would redeem the plaintiff's mortgage, the plaintiff had acquired a statutory title which enabled him to redeem the mortgage as against the first and second defendants. He concluded that, although the limitation period ceased to run when a receiving order was made in bankruptcy, "there is no reason why time should not continue to run under the Limitation Act, 1939, as regards those rights and remedies which the secured creditors have outside the bankruptcy." Such an "outside" right was the plaintiff's right to foreclose or to obtain possession of the land. And by the date of the plaintiff's notice this right was barred. Hence, he was not a secured creditor within Schedule 2 of the Bankruptcy Act, 1914, so that his notice in 1958 to the trustee was ineffective and he had not acquired a statutory title which allowed him to redeem the mortgage: see *Re Benzon* [1914] 2 Ch. 68.

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2. *CHARITIES*

By A. Kiralfy, Barrister-at-Law

Re Harpur's Will Trusts [1960] 3 W.L.R. 607; [1960] 3 All E.R. 327

Charitable institutions as legatees distinguished from charitable trusts—limited effect of Charities Act of 1954.—Cross J. has here emphasised the difference between a gift which fails for uncertainty of the specified donee and a gift which fails for uncertainty or perpetuity because it is given for purposes or objectives not of a purely charitable nature on a permanent trust.

A legacy or gift may be given to a recognised charitable institution or person or non-charitable institution, and become part of his or its general funds, immediately expendable. In the instant case the capital of residue was left for division among such associations and institutions as had the care of disabled war veterans as their main objects (but not their exclusive objects) in such proportions as the trustees should think fit. The learned judge ordered inquiries as to such bodies. If a complete list of such bodies could be compiled, the gift was good, as the whole range of possible beneficiaries would be known. *Re Ogden* [1933] Ch. 678 was followed; in that case Liberal political associations were the relevant group.

If no complete list could be worked out, and Cross J. mentioned that the will did not limit the gift to associations in this country, the gift would fail for uncertainty as not controllable by the court.

It was argued that the Charitable Trusts (Validation) Act of 1954 might retrospectively save the gift, which came into effect within its period of operation, in that the gift might in fact be given to some servicemen's association for application to some purely charitable part of their work, so that the alternatives of charitable or non-charitable application existed. Cross J. rejected this. The Act is confined to persisting trusts for charitable purposes which might otherwise fail. It does not apply to gifts to specified charitable bodies or to gifts to

bodies identified as having their main objects charitable. The 1954 Act is temporary and reflects no broad general principles which could be of assistance.

It is interesting to notice that the court felt bound by the decision of Harman J. in the *Gillingham Bus Disaster Fund Case* [1958] Ch. 300.

The moral of this case is that testators and their advisers who wish to be sure of satisfaction and to avoid heavy expenditure on subsequent inquiries should name their beneficiaries or their maximum list of the same. The identities of charitable bodies are easy to ascertain in advance, from their advertisements or from directories.

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3. *LANDLORD AND TENANT CASES*

By D. Macintyre m.a., Barrister-at-Law

Gladstone v. *Bower* [1960] 3 W.L.R. 575; [1960] 3 All E.R. 353 (C.A.)

Agricultural Holdings Act, 1948—*security of tenure—letting for fixed term of eighteen months—whether letting for an interest less than a tenancy from year to year.*—The Court of Appeal has unanimously upheld the decision of Diplock J. in this case (noted at p. 77, *ante*) for the same reasons. A letting of an agricultural holding for a fixed term of more than one year but less than two years is not a letting " for an interest less than from year to year," which takes effect as a tenancy from year to year by virtue of section 2 (1) of the Agricultural Holdings Act, 1948. Such a tenancy comes to an end, therefore, by efflux-ion of time, as soon as the fixed term comes to an end. No notice to quit is required, so that the provisions for security of tenure contained in sections 23 to 25 of the Act do not apply.

The court rejected with some reluctance the argument of counsel for the tenant (noted at p. 77, *ante*) to the effect that any letting for less than two years must, for the purposes of the Act be treated as a letting for an interest less than a tenancy from year to year, since a tenancy from year to year cannot as a result of section 23 (1) be brought to an end before the end of the second year. That view would at least give a greater appearance of consistency to the Act as a whole. But, however strange it may seem that protection should be given to both tenancies for up to one year (s. 2 (1)) and tenancies for two years and upwards (s. 3 (1)) but not to tenancies for any intermediate period, the Court of Appeal was unanimous in holding that no other construction of the Act is possible.

Leave to appeal to the House of Lords was granted.

Wine Shippers (London) Ltd. v. *Bath House Syndicate Ltd.* [1960] 1 W.L.R. 989; [1960] 3 All E.R. 283 (C.A.)

Landlord and Tenant Act, 1954—*business premises—application for new tenancy—landlord's intention to demolish or reconstruct—*

practice—discovery.—The decision of Buckley J. in this case (noted at p. 326, *ante*) has been reluctantly reversed. Both Buckley J. and the Court of Appeal sought to apply the principle laid down by Lord Greene M.R. in *Re Borthwick* [1948] Ch. 645, 649, namely that "discovery in proceedings in the Chancery Division by originating summons ought only to be ordered in very special cases where the facts are such as to justify such an order being made." The Court of Appeal felt compelled to hold, however (reversing Buckley J.), that there were no special circumstances in the present case which would justify an order for discovery. The mere fact that the evidence before the master is incomplete and the matter is adjourned into court to be tried by oral evidence is not sufficient. Nor will an order for discovery be made in proceedings by originating summons merely in order to enable applicants to arm themselves with material for cross-examination. But if there are facts before the court which tend to cast some doubt on the fairness or accuracy of the evidence as a whole, the position may well be different—see *Re St. Martin's Theatre* [1959] 1 W.L.R. 872; [1959] 3 All E.R. 298 (noted at 23 Conv.(N.S.) 483).

Leave to appeal to the House of Lords was refused.

Chung Kwok Hotel Co. Ltd. v. *Field* [1960] 1 W.L.R. 1112; [1960] 3 All E.R. 143 (C.A.)

Recovery of possession—order for possession—assignment of landlord's interest before delivery of possession—no express assignment of benefit of order—whether right to enforce order for possession passed.—The Court of Appeal held in this case that even if the benefit of a court order for possession of property in favour of a landlord is assignable at all (which was doubted), the benefit of such an order does not pass automatically on an assignment by the landlord of the property to which it relates. The benefit of a judgment can be assigned by operation of law, if the judgment holder dies or becomes bankrupt or of unsound mind. And a judgment for possession against a statutory tenant will pass on the death of the landlord to his personal representatives and through them to a beneficiary (see *Goldthorpe* v. *Bain* [1952] 2 Q.B. 455). But there is nothing in *Goldthorpe* v. *Bain* to justify a contention that a mere assignment of the land *inter vivos* will automatically pass the benefit of an order of this nature.

But the court also expressed the view that the assignees in this case were not without remedy. The original landlord had contracted to sell the property with the benefit of the order to purchasers: the purchasers assigned the benefit of this contract to a sub-purchaser: and the landlord then transferred the land to the sub-purchaser, who immediately executed a deed of trust in favour of the plaintiff company and later transferred the land to them, though without the benefit of the order. In these circumstances the original landlord could still enforce the order; and it would not be futile to allow her to do so, in spite of the fact that she had no interest in the land, if she were supported by the plaintiffs: see *Knight* v. *Clarke* (1885) 15 Q.B.D. 294.

THE LIBRARY

Money at Work. Second edition. Edited by Milton Grundy. Sweet & Maxwell Ltd. 1960. 263 pp. (18s. 6d.)

Mr. Grundy's team of experts has only slightly altered. The formation of small hire-purchase companies has gone and there is now a short chapter on reversions, life interests and policies. Anyone who has bought a reversion at an auction would only need one guess to know from which stable this article emanates. For our part, we would have welcomed a much fuller article. For surtax payers, reversions and policies have a double attraction, a fair chance of a nice capital gain coupled with an element of chance. As to the rest there has been no great change. The book is still a good investment.

J. H. G.

Rentcharge Conveyancing. By H. C. Easton. (Published by the Manchester Law Society). Meredith Ray & Littler, Ltd; Sweet & Maxwell, Ltd. 1960. 114 pp. (£1 5s.)

Outside all but a few localities (such as Manchester, Salford, parts of Lancashire and the fringe of Cheshire and, to a limited extent, Bristol and London), rentcharge conveyancing is largely an esoteric subject, although from time to time lawyers all over the country are required, to their considerable discomfiture, to consider rentcharge titles arising in those areas. If the publication of this book alone does not render the subject entirely exoteric, it will at least unravel many mysteries for anyone who takes the trouble to study it. It would be surprising if any solicitor whose practice embraces rentcharges —and particularly any solicitor in Lancashire—would risk being without the book, for it contains the only comprehensive collection of precedents on the subject that has ever been published. Yet it is more than a precedent book, for each form is expounded in a series of notes, often lengthy, but always written with clarity, which, as the author intended, form an important part of the scheme of the work. Their value is the greater because the only textbook on the subject (also by the author) has for many years been out of print and unobtainable at second hand.

There are thirty-seven precedents which are designed to cover the salient situations and to be adaptable to the many variations which a conveyancer may have to provide for. The first seventeen precedents cover a wide variety of transactions where there is a conveyance on sale made in consideration of, or subject to, a rentcharge, or which apportions, or exonerates land from, a rentcharge, both first and second rentcharges being involved. There are forms of grants and conveyances of rentcharges in differing circumstances, some releases, and one or two ancillary forms. The recitals to the forms are framed in such a way as to give a picture of the title as it stood immediately before the transaction, and this method in itself gives the reader an insight into the practice of rentcharge conveyancing.

Mr. Easton (pp. 18, 19) condemns the practice of inserting so-called powers of collection in deeds when land which is already subject to an overriding rentcharge is sold in consideration of a second rentcharge. He doubts their efficacy. In any event it is clear that the normal right to contribution and an expressly conferred power for the landowner to retain the rentcharge payable by him to his immediate rentowner, should the latter fail to pay the overriding

rentcharge which he has covenanted to pay, provide entirely adequate remedies, and your reviewer is convinced that to attempt to give powers of collection also is no more than part of an ill-advised modern tendency in conveyancing to over-egg the pudding and spoil it in so doing.

Criticisms? There is no index. And there is no recognition that the system of land registration has begun to infiltrate into the Manchester area—but perhaps treatment of that aspect of the subject was no part of the author's present purpose. Mr. Easton cites no authorities for his propositions, but then who would venture to doubt an expert of his standing? In size this is a little book, but it is an extremely important one.

T. B. F. R.

Current Legal Problems 1960. Edited by George W. Keeton and Georg Schwarzenberger. Stevens & Sons Ltd. 1960. 292 and 10 pp. (£2 10s.)

This year's volume of public lectures delivered to the Faculty of Laws of University College, London, does not contain much of interest to the conveyancer. Professor Keeton has contributed a paper on the reform of the law of charities and Mr. Waters has some pertinent remarks on modern family trusts, which have a tendency to be simple discretionary trusts with over-riding powers of appointment, and their variation. Master Jacob would like to reverse the trend towards even simpler and fewer pleadings and interlocutory applications, but we doubt whether he will get support, at any rate from solicitors. An application in the county court for a new lease under the Landlord and Tenant Act, 1954, is simple and the hearing follows swiftly, and we doubt whether the more cumbersome and slow procedure in the High Court achieves a more satisfactory result. Even with the additional labour it is well-nigh impossible for the terms of the old lease to be varied to any great degree if the solicitors do not agree. By far the most interesting paper is that by Mr. D. J. Payne on "Compensating the Accident Victim." He deals principally with running-down cases and would make compensation part of social security, but without taking the burden off the motorist. There is undoubtedly a growing body of opinion supporting this view, for the present system is quite inadequate to meet modern conditions A breadwinner may be permanently incapacitated and receive no compensation for lack of proof. Even where there is evidence, an accident happens so quickly that it is often confused. Where there is complete incapacity there is no means of awarding an annuity which is often the only really appropriate method of compensation. Saskatchewan already has a fully working scheme of state compensation that has been functioning for nearly fifteen years. Mr. Payne has done a very useful service in dealing with his subject so fully. This has nothing to do with this journal but a change of environment is always beneficial.

E. F. G.

We have also received:

Supplement to the Law Relating to Caravans. By Roland J. Roddis, L.M.P.T.I., Barrister-at-Law. Shaw & Sons, Ltd. This supplement contains the text of the Caravan Sites and Control of Development Act, 1960, the Model of Standards, 1960, prescribed under section 4 and amendments to the text of the main book as a result of the Act. The supplement is free to purchasers of the main book which was reviewed *ante*, p. 447.

PRECEDENTS

FORM 1

Conveyance by joint tenants one of whom became a bankrupt after contract but before completion, his trustee in bankruptcy joining in

(Drafted by Edward Collins, Solicitor)

THIS CONVEYANCE is made the —— day of —— 19 — BETWEEN AB of *etc.* and CD of *etc.* of the First part EF of *etc.* the Trustee of the property of the said AB a Bankrupt (hereinafter called "the Trustee in Bankruptcy") of the second part the Trustee in Bankruptcy and the said CD of the third part the —— Society etc. (hereinafter called "the Society") of the fourth part and GH of *etc.* (hereinafter called "the Purchaser") of the fifth part WHEREAS by a Conveyance (hereinafter referred to as "the Conveyance") dated the —— day of —— —— 19— and made between XY of the one part and the said AB and CD of the other part the property described in the Schedule hereto was conveyed to the said AB and CD in fee simple free from incumbrances to be held by them as joint tenants upon trust for sale and as to the net proceeds of sale and net rents and profits pending sale upon trust for the said AB and CD as joint tenants AND WHEREAS by a Mortgage (hereinafter referred to as "the Mortgage") dated the —— day of —— 19— and made between the said AB and CD of the one part and the Society of the other part the said property was demised to the Society for the term of —— years by way of mortgage for securing payment to the Society of the sum of £—— and interest thereon as therein mentioned AND WHEREAS by an Order of —— Court made on the —— day of —— 19— the said AB was adjudicated bankrupt and on the —— day of —— 19— the

Trustee in Bankruptcy was duly appointed Trustee of the property of the said AB and such appointment has been formally certified by the Board of Trade AND WHEREAS prior to the said Order the said AB and CD in exercise of the said trust for sale had entered into a binding Contract with the purchaser for the sale to him of the said property for an estate in fee simple in possession free from incumbrances at the price of £—— AND WHEREAS the Trustee in Bankruptcy has agreed to join in this Deed in the manner and for the purposes hereinafter appearing AND WHEREAS it is uncertain whether the legal estate in the said property remains still vested in the said AB and CD as trustees for sale or became vested in the Trustee in Bankruptcy and the said CD as trustees for sale by virtue of the said Order and it has therefore been agreed in order to provide for the first contingency that the legal estate shall be conveyed by the said AB and CD and in order to provide for the second contingency by the Trustee in Bankruptcy and the said CD AND WHEREAS there is due to the Society on the security of the Mortgage the sum of £—— representing Principal money and Interest AND WHEREAS it has been agreed that out of the said purchase price of £—— the Society shall receive the said sum of £—— in satisfaction of all moneys owing to the Society under the Mortgage and that the Society shall join in this Deed in manner hereinafter appearing AND WHEREAS the effect of the bankruptcy of the said AB was to sever the beneficial joint tenancy referred to in the first recital in this Deed and to make the Trustee in Bankruptcy and the said CD tenants in common in equal shares as regards the net proceeds of sale and net rents and profits pending sale and it has accordingly been agreed that the balance of the purchase money after payment of the amount due to the Society shall be paid as to one half thereof to the Trustee in Bankruptcy and as to the other half to the said CD

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreements and in consideration of the sum of £—— on or before the execution hereof paid by the Purchaser as to £—— part thereof to the Society by the direction of the said AB and CD (the receipt whereof the

Society and the payment whereof in manner aforesaid the said AB and CD hereby respectively acknowledge) and as to £—— further part thereof to the Trustee in Bankruptcy (the receipt whereof the Trustee in Bankruptcy and the payment whereof in manner aforesaid the said AB hereby respectively acknowledge) and as to £—— the remainder thereof to the said CD (the receipt whereof the said CD hereby acknowledges) the said AB and CD as Trustees and on the footing that the legal estate in the said property is vested in them HEREBY CONVEY and the Trustee in Bankruptcy and the said CD as Trustees and on the footing that the legal estate in the said property is vested in them HEREBY CONVEY and the Society as Mortgagee HEREBY SURRENDERS AND RELEASES unto the Purchaser ALL AND SINGULAR the property described in the said Schedule TO HOLD the same unto the Purchaser in fee simple freed and discharged from the Mortgage and from all principal moneys and interest thereby secured and from all claims and demands thereunder and to the intent that the term subsisting under the Mortgage shall merge and be extinguished in the fee simple thereof

2. Certificate of Value

IN WITNESS, *etc.*

THE SCHEDULE REFERRED TO

Description of property

Attestations

FORM 2

Mortgage by a trader of his business premises and goodwill together with an insurance policy on his life with provisions for repayment by instalments

THIS MORTGAGE is made the —— day of —— 19— BETWEEN —— of [whose registered office is situate at] —— in the County of —— (hereinafter called "the Borrower") of the first part [and] XY Ltd. whose registered office is situate at —— in the County of —— (hereinafter called "the Mortgagee") of the second part [and —— of —— in the County of —— (hereinafter called "the Guarantor") of the third part]

WHEREAS:

(1) This deed is supplemental to [an Assignment dated the —— day of —— 19— and made between —— of the one part and the Borrower of the other part (hereinafter called "the principal Deed") being an assignment to the Borrower of] a Lease dated the —— day of —— 19— and made between —— of the one part and —— of the other part [(hereinafter called "the principal Deed")] whereby certain shop or business premises situate at and known as —— in the County of —— therein more particularly described (hereinafter called "the said property") are held by the Borrower for the residue of a term of —— years from the —— day of —— 19— at the yearly rent of £——

(2) For some time past the business of —— has been carried on at the said property and in consequence thereof goodwill has become attached thereto

(3) The Mortgagee has agreed with the Borrower to lend to the Borrower the sum of £—— upon having the repayment thereof together with the other moneys hereinafter mentioned secured [and guaranteed] in the manner hereinafter appearing

(4) The Borrower is absolutely and beneficially entitled free from incumbrances to the policy of insurance numbered —— (hereinafter called "the said insurance policy") effected in the Borrower's name in the offices of the —— which provides for

the payment of the sum of £—— in the event of the death of the said —— at any time before the —— day of —— 19— under the annual premium of £——

[(5) The Guarantors have agreed to join in this deed for the purposes and in the manner hereinafter appearing]

Now in pursuance of the said [respective] agreement[s] and in consideration of the sum of £—— now paid by the Borrower to the Mortgagee (the receipt whereof the Mortgagee hereby acknowledges) [and of the covenants on the part of the Guarantors hereinafter contained]

THIS DEED WITNESSETH as follows:—

1. Subject to the provisions of Clause 2 hereof the Borrower hereby covenants with the Mortgagee to pay to the Mortgagee on demand the following sums that is to say:—

(1) the said sum of £—— (hereinafter called "the principal sum") and

(2) if and so long as the whole or any part of the principal sum shall remain unpaid a sum of £—— per annum (hereinafter called "the service charge") which shall be deemed to accrue from day to day from the date hereof

2. If and so long as the power of sale applicable hereto shall not as between the Borrower and the Mortgagee have become exercisable in accordance with the provisions of clause 10 hereof and the Borrower shall duly and punctually pay to the Mortgagee the monthly sum of £—— on the —— day of each month the first of such monthly payments to be made on the —— day of —— next hereafter until the sum of £—— (hereinafter called "the total instalment sum") shall have been thereby paid to the Mortgagee then the Mortgagee shall not make any demand upon the Borrower under the provisions of the preceding clause hereof in respect of either the principal sum or the service charge

3. If and as often as the Mortgagee shall make any demand upon the Borrower under the provisions of Clause 1 hereof the Borrower shall be entitled in relation to such demand to bring into account all or any payments made by the Borrower to the Mortgagee under the provisions of Clause 2 hereof

4. The Borrower as beneficial owner hereby demises unto the Mortgagee ALL AND SINGULAR the said property together with all other the property and premises comprised in the principal Deed TO HOLD the same unto the Mortgagee henceforth for all the residue now unexpired of the said term of years created by the above recited Lease [the principal Deed] except the last 10 days thereof subject nevertheless to the proviso for redemption hereinafter contained

5. The Borrower as beneficial owner hereby assigns unto the Mortgagee ALL THAT the goodwill and connection of the said business now carried on at the said property and also all moneys to be received by or from time to time owing or to become owing to the Borrower in respect of the said business TO HOLD the same unto the Mortgagee absolutely subject nevertheless to the proviso for redemption hereinafter contained

6. The Borrower as beneficial owner hereby further assigns unto the Mortgagee ALL THAT the said insurance policy and the right to receive and give a good discharge for the said sum of £—— thereby secured and the full benefit thereof together with all powers and remedies exercisable under or in respect of the said insurance policy TO HOLD the same unto the Mortgagee absolutely subject nevertheless to the proviso for redemption hereinafter contained

7. Provided always that if the Borrower shall on such demand as aforesaid pay to the Mortgagee the full amount of the principal sum and of the service charge then accrued in accordance with the provisions of Clauses 1 and 3 hereof or shall pay the total instalment sum in accordance with the provisions of Clause 2 hereof and shall in either case also pay any other sum or sums which shall for the time being be due and owing to the Mortgagee under any of the provisions of this deed then and in such case the term hereby created shall absolutely cease and determine and merge in the reversion immediately expectant thereon and the Mortgagee shall at the request and cost of the Borrower re-assign to the Borrower all or any of the premises hereinbefore assigned

8. The Borrower hereby covenants with the Mortgagee and it is hereby agreed and declared as follows:—

(1) That the Borrower will during the continuance of this

security duly and punctually pay all premiums and other moneys payable for keeping up the said insurance policy or any substituted policy or policies and produce the receipts for the same on demand to the Mortgagee and will not do or suffer anything whereby the said policies or any of them may become void or voidable or whereby (otherwise than under the proviso for redemption hereinbefore contained) the Mortgagee may be prevented from receiving the moneys to become payable under any such policy And further that if any such policy is or shall become voidable or void the Borrower will immediately at his own cost do all things necessary for restoring or renewing the same and will deliver any substituted policy to the Mortgagee and that every such substituted policy shall be subject in all respects to this security And in case default shall be made in the performance of any of the covenants on the part of the Borrower hereinbefore contained concerning any of the said policies the Mortgagee may at the cost of the Borrower do what is necessary to make good such default and all moneys expended by the Mortgagee under this provision shall be deemed to be properly paid by the Mortgagee

(2) That the Borrower will during the continuance of this security keep all messuages buildings and property machinery fixtures and fittings now or for the time being comprised in or subject to this security in good and substantial repair and in perfect working order and will keep the same and also the stock-in-trade from time to time used in connection with the business hereinbefore referred to insured against loss or damage by fire to the full value thereof in the —— Insurance Office or in some other insurance office to be approved in writing from time to time by the Mortgagee in the joint names of the Borrower and the Mortgagee and will duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance immediately on the same becoming due or within seven days thereafter and will on demand produce to the Mortgagee the policy or policies of such insurance as aforesaid and the receipt for every such payment And that if default shall at any time be made by the Borrower in keeping the said premises or any of them or any part thereof in good and substantial repair and in

proper working order or in effecting or keeping up such insurance as aforesaid or in producing any such policy or receipt to the Mortgagee on demand the Mortgagee may repair or keep the said premises or any part thereof in repair and put the same into proper working order (with power to enter upon the said premises for that purpose) and may insure and keep the same insured in any sum not exceeding £—— And that all moneys expended by the Mortgagee under this provision shall be deemed to be properly paid by the Mortgagee

(3) That the Borrower will during the continuance of this security carry on the said business now being carried on upon the said property and will use his best endeavours so to carry on the same as to maintain or enhance the value thereof and will keep proper books of account of the said business and make full entries therein of all the dealings and transactions of the said business and will keep such books and all letters papers and documents belonging to or relating to the said business upon the said property and will at all times (if required) produce the same for the inspection of the Mortgagee or allow the Mortgagee or any person appointed in writing by the Mortgagee to have free access thereto and to make copies of and take extracts from the same

(4) That the Borrower will not during the continuance of this security sever or dispose of any fixtures or fittings now or at any time hereafter affixed to the said property otherwise than in the ordinary course of maintenance or replacement or sell any stock-in-trade otherwise than in the ordinary course of business

(5) That the Borrower will not during the continuance of this security without the previous consent in writing of the Mortgagee grant or agree to grant any lease or tenancy or part with or share the possession or occupation of the said property or any part thereof or accept or agree to accept a surrender of any lease or tenancy thereof

(6) That the Borrower will not during the continuance of this security without the previous consent in writing of the Mortgagee erect or place or cause or suffer to be erected or placed on the said property or any part thereof any buildings or other works of any additions alterations or improvements to buildings or works erected or standing thereon or on any part thereof or

make or cause or suffer to be made any material change in the user of the said property or any part thereof or of any building erection or works erected or standing thereon or on any part thereof

(7) That the Borrower will on demand repay to the Mortgagee all costs charges and expenses properly incurred or paid hereunder by the Mortgagee together with interest thereon at the rate of —— per cent. per annum from the date or dates on which the same shall have been respectively incurred and until so repaid

(8) That the restriction on the consolidation of mortgages imposed by section 93 of the Law of Property Act 1925 shall not apply to this security

9. Where any person or persons is or are parties to this deed as a Guarantor for the Borrower then the Guarantor hereby covenants and agrees with the Mortgagee in the terms of all the covenants on the part of the Borrower and the agreements hereinbefore contained and such covenants and agreements shall operate and take effect in all respects as if the same had been expressed to be entered into as joint and several covenants by the Borrower and the Guarantor with the Mortgagee and without prejudice to the rights of the Guarantor against the Borrower as principal debtor the Guarantor shall as between the Guarantor and the Mortgagee be deemed a principal debtor under the foregoing covenants and agreements

10. The statutory powers of sale and appointment of a receiver in respect of the security hereby created shall each be deemed to arise on the execution of this deed but as between the Borrower and the Mortgagee (but not so as to affect or concern a purchaser from the Mortgagee) the said powers and each of them shall become exercisable only on the happening of any one or more of the following events that is to say:—

(1) If the Borrower shall become bankrupt or have a receiving order made against him or shall commit any act of bankruptcy or enter into any arrangement or composition for the benefit of the Borrower's creditors or being a company shall enter into liquidation whether compulsory or voluntary (not being a

voluntary liquidation for the purpose of amalgamation or reconstruction)

(2) If the premises comprised in this security or any part of such premises or any chattels situated on the said property belonging to the Borrower shall be taken in execution or if any such chattels as aforesaid shall be taken under a distress for any rent rates or taxes

(3) If the Borrower shall at any time make default in payment of any sum payable hereunder for the space of seven days after the same shall have fallen due and payable or if the Mortgagee's right to demand the repayment of the principal sum or any outstanding balance thereof shall arise

(4) If the Borrower shall neglect or omit to pay perform and observe the rent covenants on the part of the lessee and conditions reserved by or contained in the said lease [principal Deed] or to keep the Mortgagee indemnified against all actions and proceedings costs damages expenses claims and demands by reason of the non-payment of such rent or of the breach non-performance or non-observance of the said covenants and conditions or any of them

(5) If the Borrower shall die or shall neglect or fail to observe or perform any of the covenants or provisions on the part of the Borrower herein contained or shall give or execute any bill of sale over any of the chattels or effects of the Borrower

11. Where there are two or more persons included in the expression "the Borrower" or "the Guarantor" (if any) then covenants expressed to be made by the Borrower or by the Guarantor shall be deemed to be made by such persons respectively jointly and severally

12. The Borrower hereby attorns and becomes tenant at will to the Mortgagee during the continuance of this security at the yearly rent of sixpence if demanded but not to be recoverable by distress but so nevertheless that the Mortgagee may at any time without notice enter on and take possession of the said property and determine the tenancy hereby created Provided that nothing in this clause contained shall render the Mortgagee liable to account as mortgagee in possession

IN WITNESS, *etc.*

FORM 3

Will of testator providing for his wife and for a daughter who is not over-careful with money

(*Drafted by K. E. B. Kemp, Barrister-at-Law*)

This is the last Will of me —— of —— which I make hereby revoking all other Wills and testamentary dispositions by me heretofore made

1. I appoint —— of —— and —— of —— Solicitor (hereinafter called "my Trustees") to be the executors and trustees of this my Will

2. I give free of all death duties (a) To my wife —— for her own absolute use and benefit the sum of £—— (to be paid to her within one calendar month after my death) and also all articles and effects of personal domestic household stable or garage use ornament or consumption belonging to me and not otherwise effectually disposed of by this my Will or any codicil thereto and (b) To my daughter —— for her absolute use and benefit the sum of £——

3. I give the residue of my property to my Trustees upon trust to sell and call in the same with power to postpone such sale and calling in indefinitely without being responsible for loss and I direct that the income of the unsold part thereof for the time being shall be applied in the same manner as if it were income of investments of the proceeds of sale and calling in thereof

4. My Trustees shall out of the moneys to arise from the proceeds of such sale and calling in and out of my ready money pay my funeral and testamentary expenses and debts and the legacies given by this my Will or any codicil hereto and all death duties and other moneys which under or by virtue of any direction or bequest free from duty contained in this my Will or any codicil hereto are payable out of my general personal estate

5. My Trustees shall invest the residue of such moneys in or upon any investments hereby authorised and shall hold such

investments (which with the property for the time being representing the same and such parts of my estate as for the time being remain unsold are hereinafter called "the Trust Fund") upon the trusts hereinafter set out

6. My Trustees shall hold the trust fund upon trust to divide the same into two moieties (hereinafter respectively referred to as "my wife's moiety" and "my daughter's moiety") and to pay the income of my wife's moiety to my said wife during her life and subject as aforesaid shall hold the trust fund as follows that is to say:—

(1) During the period of 21 years from my death my Trustees shall pay or apply the whole or such part or parts of the income of the trust fund as they in their absolute discretion think fit to or in such manner as they think proper for the benefit of my said daughter during her life and shall accumulate the remainder of such income at compound interest by investing the same and the resulting income thereof in any investments hereby authorised and shall hold such accumulations as part of the capital of my daughter's moiety Provided always that during the said period my Trustees may from time to time resort to the accumulations of any preceding year or years and pay or apply the same to or for the benefit of my said daughter in manner aforesaid as if the same were income of the then current year

(2) From the expiration of the said period of 21 years my Trustees shall pay the income of the Trust Fund to my said daughter during the remainder of her life

(3) Notwithstanding anything hereinbefore contained my Trustees shall have power at their absolute discretion from time to time to raise out of the trust fund and pay or apply to or for the benefit of my said daughter such capital sum or sums as they think fit PROVIDED ALWAYS that the aggregate of the sums so raised in any one year shall not exceed £——[1] and during the life of my said wife such sums shall be raised only out of my daughter's moiety

(4) Without prejudice to the generality of the provisions hereinbefore contained I expressly authorise my Trustees if they

[1] A figure fitting for the size of the Testator's estate will be inserted here.

in their absolute discretion think fit on the occasion of the marriage of my said daughter to raise out of the trust fund (but if my said wife is then living only out of my daughter's moiety) a sum not exceeding £—— and apply the same in the purchase of a suitable house as a residence for my said daughter and her husband such house to be assured to my said daughter for her absolute use and benefit PROVIDED ALWAYS that the said sum shall not be included in the calculation of the aggregate amounts which may be raised in any one year by my Trustees under the power in that behalf contained in the last preceding sub-clause

(5) Subject as aforesaid my Trustees shall hold the trust fund for such persons as my said daughter shall by will or codicil appoint and subject to and in default of any such appointment for the child or children of my said daughter and if more than one in equal shares And if there shall be no such child then for ——[2] absolutely

7. (1) Trust moneys (including accumulations of income) may be invested in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever and whether involving liability or not as my Trustees shall in their absolute discretion think fit to the intent that my Trustees shall have the same full and unrestricted powers of investing and transposing investments in all respect as if they were absolutely entitled thereto beneficially

(2) Without prejudice to the generality of the foregoing trust moneys may be invested in the purchase of landed property in England or Wales of any tenure including leaseholds held for a term of which not less than 60 years shall be expired at the time of purchase and whether subject or not to leases easements or restrictive covenants

(3) All such landed property shall be assured to my Trustees in fee simple or for the residue of the term or terms for which the same is held upon trust to sell the same with power to postpone such sale and to hold the proceeds of such sale after payment of the costs thereof upon the same trusts and with and

[2] The name of an ultimate contingent legatee should be inserted, so as to ensure that gift over will be effective.

subject to the same powers and provisions (including this present power of purchasing landed property) as the money so laid out in the purchase of the said property would have been subject to if it had not been so laid out

8. My Trustees (both in their capacity as personal representatives and as Trustees) may in extension of the power of appropriation conferred on personal representatives by section 41 of the Administration of Estates Act 1925 at any time or times at their discretion appropriate any part or parts of my residuary estate in its then actual condition or state of investment in or towards satisfaction of any legacy or share in my residuary estate or the proceeds of sale thereof without the necessity of obtaining the consent of any person or persons whose consent is required to the exercise by personal representatives of the power of appropriation conferred by that section

9. Any executor or trustee for the time being thereof being a Solicitor or other person engaged in any profession or business shall be entitled to charge retain and be paid in priority to all other bequests hereby made all professional or other charges for business done by him or his firm in relation to the trusts hereof and also his reasonable charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with matters arising in the premises including matters which might have been attended to in person or by a trustee not being a solicitor or other professional person

10. In this my Will where the context so requires or admits the expression "my Trustees" shall include the trustees or trustee for the time being hereof

AS WITNESS, *etc.*

FORM 4

Variable rent clause [1]

Yielding and Paying to the Lessors during the first twenty-one years of the said term the yearly rent of —— and during the remaining twenty-one years of the said term the rent which the respective Surveyors of the Lessors and the Lessees shall within two months of the —— day of —— 19— agree upon in writing as being the then current market rental value for the letting of the demised premises as a whole for the term of twenty-one years from the —— day of —— 19— upon the terms of this Underlease (save as regards rent) And in default of agreement as aforesaid the rent shall be valued on the basis aforesaid by a Surveyor to be appointed on the application of the Lessors by the President for the time being of the Royal Institution of Chartered Surveyors whose valuation shall be made as an expert and not as an Arbitrator and shall be final and binding upon the Lessors and the Lessees

[1] For another Form adopting a different basis of calculation, see Vol. 23, Form 10, p. 707.

FORM 5

Arrangement converting contingent interests into vested interests, the rights of the parties on a possible intestacy being preserved as protection against claims by non-parties Variation when issue are to take on failure of the contingent interests [1]

(Drafted by Sir Lancelot Elphinstone, of Lincoln's Inn)

THIS DEED of Family Arrangement is made the —— day of —— BETWEEN [A] of *etc.* (hereinafter called "the Mother") of the first part [B C and D] hereinafter called "the Children" of the second part and [E] of *etc.* and the said [D] (hereinafter called "the Trustees") of the third part

WHEREAS:—

(1) Under the will dated the —— day of —— and proved on the —— day of —— in the —— Probate Registry by the Trustees being the executors therein named the residuary estate of the said testator which now consists of the property mentioned in The Schedule hereto is held by the Trustees upon trust to pay the income thereof to the Mother during her life and after her death in trust for all or any of the Children who shall be living at the death of the Mother if more than one in equal shares

(2) It is considered that if none of the Children shall be living at the death of the Mother there will be an intestacy as regards the reversion expectant on the death of the Mother and that her personal representatives will be entitled to a charge on the said residuary estate for the principal sum of £—— diminished by the actuarial value at the date of the death of the said testator of her life interest under the said will with interest on the said principal sum (diminished as aforesaid) at the rate of £4 per cent. per annum from the death of the said testator until payment [2]

(3) The Children and the issue living at the death of the said testator of [G] (a son of the said testator) who died in the

[1] The stamp should be adjudicated.

[2] See the Administration of Estates Act, 1925, s. 49, the Intestates' Estates Act, 1952, s. 3, and *Re McKee* [1931] 2 Ch. 145.

lifetime of the said testator are the only persons other than the personal representatives of the Mother entitled to share in the residuary estate of the said testator on his intestacy

(4) The Mother and the Children desire that the trusts of the said will shall be varied in manner hereinafter appearing.

NOW THIS DEED WITNESSETH as follows:—

1. The Mother and the Children hereby agree that in lieu of the trusts contained in the said will of the said testator his residuary estate shall on the death of the Mother be held in trust for the Children in equal shares

[*or* 1. The Mother and the Children hereby agree that if any of the Children shall die in the lifetime of the Mother leaving issue living at his or her death such issue attaining the age of twenty-one years or being female marrying shall take by substitution if more than one in equal shares *per stirpes* the share of the said residuary estate which the deceased child would have taken had he or she been living at the death of the Mother provided that no such issue shall take unless his or her parent has died without attaining a vested interest [3]]

2. Provided always that in the event of an intestacy occurring on the death of the Mother the charge in favour of her personal representatives and the interests of the Children on the intestacy shall be kept on foot for the protection of the Children and the Trustees and their respective estates against all claims by any of the issue of the said [G] or by any other person to the said residuary estate or any part thereof by reason of the intestacy but save as aforesaid the said charge and interests shall merge and be extinguished

3. The Mother and the Children hereby jointly and severally covenant with the said [E] that the covenanting parties or some or one of them or their respective personal representatives will at all times keep the said [E] and his estate indemnified from and against all actions proceedings claims demands and expenses

[3] This form may be preferable when the children are elderly so as to prevent estate duty from being payable on the share of a child dying in the lifetime of the mother.

which may be suffered made or incurred by the said [E] or his estate on account of or by reason of anything done for giving effect to the provision of this Deed Provided that the liability of the Mother under this covenant shall be limited to the amount of the charge on the said residuary estate in favour of her personal representatives

4. The said [B] and [C] hereby jointly and severally covenant with the said [D] that the covenanting parties or one of them or their respective personal representatives will at all times keep the said [D] and his estate indemnified against all such matters as aforesaid Provided that without prejudice to the right of the said [E] to be indemnified in full the liability of each of the Children under both the foregoing covenants shall be limited and adjusted so that the total liability shall be borne by the children equally

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

Property representing the residuary estate of the said testator

FORM 6

Bequest of Legacies to Charities, empowering Executors to Decide any question as to the Identity of the Charities Intended [1]

(*Drafted by P. S. A. Rossdale, Barrister-at-Law*)

(1) I bequeath the following charitable legacies (that is to say):—

To

(2) PROVIDED ALWAYS AND I HEREBY DECLARE that each of the legacies by the foregoing sub-clause hereof bequeathed shall operate only in favour of the Institution bearing in every respect the exact name herein set out And that in default of such Institution the legacy or legacies hereinbefore respectively expressed to be bequeathed thereto shall not be payable And in lieu thereof I bequeath a legacy or legacies of the same amount to my Executors IN TRUST for such charitable body or for such charitable purposes as my Executors may in their absolute discretion appoint

[1] Cases frequently occur where a legacy to a charitable body is given by an incorrect description; the result is that several charities with similar names claim the legacy; and an application has to be made to the Court to decide which is entitled. The costs of such applications fall on residue (*Re Buckton* [1907] 2 Ch. 406, 414); although charities are occasionally disallowed their costs on the ground that their claims are hopeless (as in *Re Preston* [1951] Ch. 187).

An express declaration that the executors are to judge which is the charity intended, fails (*Re Raven* [1915] 1 Ch. 673; *Re Wynn* [1952] Ch. 271). It is submitted that the above clause does not conflict with those decisions. There is no repugnancy, since the bequest is only to the Institution (if any) bearing the exact name stated in the will; and so there is no question the determination of which is expressed to be withheld from the jurisdiction of the Court. In the absence of an institution bearing the exact name in the will, there is merely a bequest to the executors on such charitable trusts as they select: and a testator may delegate to his executors the selection of charities (*Chichester Diocesan Fund* v. *Simpson* [1944] A.C. 341, *per* Viscount Simon L.C. at p. 348; and *per* Lord Simmonds at p. 371; Jarman, 8th ed., at p. 500).

(3) I declare that the receipt of the persons respectively professing to be the Treasurer or other proper officer for the time being of the several institutions hereinbefore named or appointed by my Executors under the power herein contained shall be a sufficient discharge to my Executors

FORM 7

Deed of Grant of right of way over a private road the subsoil in which is claimed by the Grantor [1]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936

County

Parish or Place:

Property:

Grantor's Title No.:

Grantee's Title No.:

THIS DEED OF GRANT is made the —— day of —— 19— BETWEEN A B of etc. (hereinafter called "the Grantor") of the one part and C D of *etc.* (hereinafter called "the Grantee") of the other part

WHEREAS:—

(1) The Grantor is registered at H.M. Land Registry as proprietor with an absolute title in respect of the property known as Cold Comfort Farm under the Grantor's Title Number above referred to and part of the said property abuts upon that part of the private road known as Cold Comfort Road as is for the purposes of identification only shown on the plan annexed hereto and thereon coloured yellow

(2) The Grantee is registered at H.M. Land Registry as proprietor with an absolute title in respect of the property edged in red on the said plan under the Grantee's Title Number above

[1] Where title to land adjoining a private road is registered it appears not to be the practice of the Land Registry to include in the property shown on the filed plan the subsoil of the road where the ownership thereof depends merely upon the common law presumption which is normally applicable in such a case.

referred to and part of the said property abuts upon the said private road coloured yellow on the said plan

(3) The Grantor claims to be entitled to the freehold of the said land coloured yellow on the said plan or to at least one half part thereof divided medially and has agreed for the consideration hereinafter mentioned to grant to the Grantee such easements rights and privileges over the said land as are hereinafter granted Now in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Grantee to the Grantor (the receipt whereof the Grantor hereby acknowledges)

THIS DEED WITNESSETH as follows:—

1. The Grantor as Beneficial Owner hereby grants unto the Grantee full and free right and liberty for the Grantee and his successors in title the owners or occupiers of the land edged in red on the plan annexed hereto or any part or parts thereof his and their undertenants and servants and all other persons authorised by him or them in common with the Grantor and his successors in title at all times hereafter and for all purposes with or without animals carriages and motor and other vehicles laden or unladen to go pass and repass along over and upon so much of the private road known as Cold Comfort Road as is delineated on the said plan and is thereon coloured yellow or over so much of such private road (not being less than one half part thereof severed medially) as the Grantor has power to make the grant herein contained To HOLD the same unto the Grantee in fee simple

2. The Grantor and the Grantee hereby apply to the Chief Land Registrar to enter on the Registers of the Grantee's title and the Grantor's title respectively such notes of the easements and rights hereby granted as are capable of being recorded thereon [2]

3. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £——

IN WITNESS, *etc.*

[2] In the case of unregistered titles, an acknowledgment for the production of the Grantor's title deeds would be required.

FORM 8

Assignment of educational policies of assurance to Trustees for the education of the Assignor's children

THIS ASSIGNMENT AND DEED OF TRUST is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Assignor") of the one part and CD of *etc.* and EF of *etc.* (hereinafter called "the Trustees" which expression shall where the context so admits or requires include the survivor of them or other the trustees or trustee for the time being hereof) of the other part

WHEREAS:—

(1) The Assignor is absolutely and beneficially entitled (free from incumbrances) to two policies of assurance respectively numbered and dated No. —— dated —— 19— and No. —— dated —— 19— (hereinafter called "the said Policies") each effected in the Assignor's name in the offices of the —— —— —— —— Society Limited to assure payment of the several sums at the dates and times set forth in the respective Tables of Benefits contained in the said Policies subject to the payment during the respective periods specified in the said Policies of the respective annual premiums payable thereunder

(2) It has been agreed between the Assignor and WAB (formerly the wife of the Assignor) that the Assignor should assign to the Trustees the benefits contained in the said Policies on trust for the education of DAB and EAB (who are infant children of the Assignor and the said WAB and are hereinafter called "the Beneficiaries") and that the Assignor should enter into a covenant to pay the premiums on the said Policies during his life

(3) The said policy numbered —— and dated the —— day of —— 19— is a fully paid up policy the last premium payable thereunder having been paid on or about the —— day of —— 19—

Now in pursuance of the said agreement and in consideration of the premises THIS DEED WITNESSETH as follows:—

1. The Assignor as Beneficial Owner hereby assigns unto the Trustees All Those the said Policies and the several sums respectively assured thereby and all bonuses additions and moneys to become payable under the said Policies and the full benefit thereof Together with all powers and remedies for recovering and obtaining payment of and giving a good discharge for all or any of the said moneys TO HOLD the same unto the Trustees upon the trusts and subject to the powers and provisions hereinafter declared concerning the same

2. The Trustees shall stand possessed of the said Policies and the moneys from time to time received thereunder and the property and investments for the time being representing the same (hereinafter called "the Trust Fund") upon trust to pay or apply the capital and income thereof as follows:

(1) Until the —— day of —— 19—[1] or the earlier death of the survivor of the Beneficiaries to pay or apply the same for or towards the education of the Beneficiaries or the survivor of them to such extent in such proportions and in such manner as the Trustees shall in their absolute discretion think fit with full power from time to time to pay the same or any part thereof to the said WAB for the purpose aforesaid without being concerned to see or inquire as to the application of any moneys so paid and with full power if the Trustees shall think fit from time to time or at all times to pay or apply the same for or towards the education of one of the Beneficiaries to the exclusion of the other

(2) Subject as aforesaid upon trust for such of the Beneficiaries as shall attain or shall have attained the age of twenty-one years and if more than one as tenants in common in equal shares

(3) Subject as aforesaid upon trust for the said WAB absolutely

3. The Assignor hereby covenants with the Trustees that the Assignor will duly and punctually pay all premiums and other moneys (if any) payable or to become payable for keeping up the said policy numbered —— and dated the —— 19— and

[1] This will be the date when the younger of the Beneficiaries attains the age of 21 years.

will produce the receipts for the same on demand to the Trustees And in case default shall be made in the performance of this covenant or any part thereof the Trustees may do all things necessary to make good such default and all moneys expended by the Trustees under this provision shall be a debt due from the Assignor and recoverable accordingly

4. Moneys for the time being forming part of the Trust Fund may be invested or applied in the purchase of or at interest upon the security of such stocks funds securities or other investments or property of whatever nature and wheresoever situate and whether involving liability or not or upon such personal credit with or without security as the Trustees shall in their absolute discretion think fit Provided that nothing herein contained shall be read or construed as imposing any obligation on the Trustees to invest or apply in the manner aforesaid the whole or any part of the Trust Fund and it is hereby declared that the Trustees may if they think fit place the whole or any part of the moneys for the time being representing the Trust Fund or the income thereof in a current or deposit account with any bank and may out of the said moneys pay any charges which may be or become from time to time payable in respect of any such account

5. Any trustee for the time being hereof being a solicitor or other person engaged in any profession or business shall be entitled to charge and retain or be paid all usual professional or proper charges for business transacted time expended and acts done by him or his firm in connection with the trusts hereof including matters which might or should have been attended to in person by a trustee not being a solicitor or other person so engaged

IN WITNESS, *etc.*

FORM 9

Non-contributory Pension Scheme [1]

THIS TRUST DEED made the —— day of —— 19— BETWEEN —— whose registered office is situate at —— (hereinafter called "the Company") of the one part and —— of —— —— of —— and —— of —— (hereinafter called "the Trustees") of the other part

WHEREAS the Company is desirous of formally establishing a superannuation and benevolent fund for the benefit of its officers and employees upon and subject to the terms hereinafter contained and with that object has transferred into the names of the Trustees —— Stock of the Company

NOW THIS DEED WITNESSETH AND IT IS HEREBY DECLARED as follows:—

1. A Fund to be called "The —— Co. Ltd. Superannuation Fund" shall forthwith be constituted for the purpose of providing annuities pensions and allowances and other benefits to the present and future officers and employees of the Company either on retirement or on becoming incapacitated or to the widows children or dependants of such officers and employees subject to and in accordance with the provisions contained in the Rules set out in the Schedule hereto or any alterations or modifications thereof that may from time to time be made in exercise of the power for that purpose herein contained

2. The Trustees shall stand possessed of the said —— Stock of the Company and all further contributions to be made by the Company as hereinafter provided Upon Trust to retain the said —— Stock of the Company or with the consent of the Board of Directors of the Company to sell the same or any part thereof and with the like consent to invest the moneys thereby produced in or upon any investments hereby authorised and on trust to apply the said —— Stock of the Company or the investments for the time being representing the same and the income thereof for the purposes aforesaid

[1] This precedent has been drafted to allow for the provisions of the National Insurance Act, 1959, as to which see generally *ante*, pp. 92–100.

3. The Company will contribute each year to the said Fund such sums as the Company shall with the advice of the actuary of the said Fund from time to time determine to be necessary to maintain the solvency of the said Fund for the purposes thereof but the Company shall not be bound to make any such contribution

4. So much of the moneys from time to time in the hands of the Trustees upon the trust hereof and in the opinion of the Trustees not presently required to be kept in hand or at call for making any payment pursuant hereto shall be invested in the name of the Trustees (a) in the —— Stock of the Company to an amount not exceeding £—— in nominal value inclusive of the said —— Stock of the Company or (b) in any investments authorised by law for the investments of trusts funds or (c) by way of loans to officers or employees of the company on the security of freehold or leasehold dwelling-houses acquired by them for their own occupation up to 80 per cent. of the value of such freehold or leasehold dwelling-houses on an independent valuation and upon such terms and conditions as to interest and repayment as may appear expedient to the Trustees Provided that such loans shall not be charged or otherwise secured upon any annuity or pension or other benefits payable hereunder to the officer or employee to whom such loans shall have been made or (d) placed on deposit with any bank or banks as the Trustees may approve

Any such investment may at any time be varied or transposed by the Trustees in their discretion for any other investment hereby authorised

5. (a) The Trustees in the exercise of the authorities and discretions hereby vested in them shall have an absolute and uncontrolled discretion and may exercise the same from time to time and at any time

(b) The Trustees may accept and act upon the advice of any Lawyer Broker Doctor Estate Agent or other professional person advising within the scope of his profession and shall incur no liability in respect of any payment or other act made or done on the faith of such advice which on the footing of such advice would have been proper

(c) No Trustee shall be answerable for the acts and defaults of any other Trustees or for joining in any receipt or document for the sake of conformity nor shall any Trustee be liable for making or concurring in making any payment hereunder which subsequently proves to be unauthorised nor for anything else except a breach of trust knowingly and fraudulently committed by himself

6. The Company may by resolution of its directors remove any Trustee from office and the Company shall have power by similar resolution to appoint new trustees or a new trustee for the purposes of this Deed in the place of any of them who shall die be removed from office retire become incapable of acting become bankrupt or make any assignment for the benefit of or any composition or arrangement with his creditors

7. Upon the determination of the trusts constituted by this Deed as provided by the said Rules the affairs thereof shall be wound up and subject to the payment of all costs charges and expenses which may then be owing and to provision being made so far as the said Fund will admit and in accordance with the said Rules for the continued payment of any annuities or pensions which are then payable the balance of the fund if any shall in the discretion of the Trustees be applied in making payments in lieu of contributions under and by virtue of the National Insurance Act 1959 in respect of or otherwise in providing non-commutable and non-assignable annuities in accordance with the said Rules for all or any of the persons who are then in the active service of the Company and to whom the superannuation scheme is or may be applicable in accordance with the Rules thereof and the said Act [2]

8. The Company may from time to time by instrument in writing under its Common Seal with the assent in writing of the Trustees but subject to the National Insurance Act 1959 [3] alter all or any of the provisions of this Trust Deed other than

[2] See s. 7 of the Act. If the balance of the Fund is in fact insufficient for making all the "payments in lieu of contribution" in respect of the employees who have been contracted out of the Act, the company will, it is apprehended, be liable to make up the difference (s. 7 (3)).

[3] See s. 8 (4) of the Act.

this Clause or all or any of the said Rules for the time being relating to the said Fund and may make new Trust provisions or Rules to the exclusion of or in addition to all or any of the Trust provisions or Rules for the time being relating to such Fund; and the Trust provisions or Rules so made and for the time being in force shall be deemed to be Trust provisions or Rules in relation to the said Fund of the same validity as if they had been originally contained in these presents and shall be subject in like manner to be altered or modified by any subsequent instrument in writing as aforesaid Provided that no such alterations as aforesaid shall (a) cause the main purpose of the said Fund to cease to be that of providing annuities and pensions to officers and employees or (b) substantially prejudice any annuity pension or other benefit being paid hereunder at the date of such alteration or (c) authorise the transfer or payment of any part of the said Fund to the Company [4]

THE SCHEDULE above referred to

Rules for the Administration of the —— Superannuation Fund

Definitions

1. In these Rules the following words and expressions shall have the following meanings:

"the Company" means the —— Company Limited

"the Trustees" means the Trustees for the time being acting under and for the purposes of these Rules

"the Fund" means the funds already provided by the Company and standing in the names of the Trustees and all other funds that may from time to time be provided by the Company or otherwise for the purposes of these Rules together with the accumulations thereof

"Officers and Employees" means any person male or female employed by the Company in any capacity at a weekly monthly or other periodical wage or salary (but excluding part-time or casual or temporary employees) in respect of whom there has been issued to the Company a certificate of non-participation

[4] On the effect of such a clause, see *ante*, p. 165, and cases there cited.

within the meaning of the National Insurance Act 1959 and such certificate is valid and subsisting at the date when the benefits arise to be paid to such person hereunder [5] Provided always that Directors of the Company shall not be "Officers and Employees" for the purposes of these Rules except in those cases in which a Director gives full-time service to the Company as a Managing Director or General Manager or Secretary or in some other capacity in addition to membership of the Board of Directors. In any case of doubt or dispute the decision of the Trustees that any person is or is not or has ceased to be an "Officer and Employee" for the purpose of any of these Rules and within the meaning of this definition shall be final and binding on all parties concerned

"Service" means continuous service with the Company without any interval In the case of an Officer or Employee who has left and rejoined after an interval (other than war or other National Service undertaking with the consent or acquiescence of the Company) service shall count from the last rejoining

"Wages or Salaries" means periodical remuneration of a fixed amount received in consideration of service with the Company but excluding (i) commission of any kind (ii) bonuses (iii) remuneration for special services or overtime work (iv) the value of any free housing lodging board fuel or lighting provided by the Company and (v) in the case of a Director his fees or remuneration as such Director

"These Rules" means these Rules as originally framed or as altered from time to time as hereinbefore provided

Management

2. (a) The Administration of the Fund shall be under the control of the Trustees who shall so far as practicable be not less than three in number but if at any time there shall be only two Trustees they may act for all purposes pending the appointment of a Third Trustee

(b) The Trustees shall appoint a secretary who may be one of themselves and shall also be at liberty to employ and pay

[5] As to whether or not any employees should be contracted out of the Act, see *ante*, pp. 93–95.

such clerks and agents as they may consider necessary for the conduct of the business of the Fund

3. (a) The Trustees may meet together for the dispatch of business adjourn and otherwise regulate their meetings as they think fit and may determine the quorum necessary for the transaction of business Until otherwise determined three Trustees shall form a quorum. A Trustee may at any time convene a meeting of the Trustees to be held at the office of the Company Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes the chairman shall have a second or casting vote. A Trustee not in the United Kingdom shall not be entitled to notice of a meeting of the Trustees

(b) A meeting of the Trustees for the time being at which a quorum is present shall be competent to exercise all or any of the authorities powers and discretions by these presents vested in the Trustees generally

4. (a) The Trustees shall cause proper minutes to be kept and entered in a book provided for the purpose of all their resolutions and proceedings and any such minutes of any meeting of the Trustees if purporting to be signed by the chairman of such meeting or by the chairman of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes

(b) A register shall be kept by the Trustees in which shall be entered the names and addresses of the persons for the time being and from time to time who are in receipt of allowances hereunder and of the Trustees for the time being hereof

(c) For the purposes hereof any notice to any Trustee or to any person in receipt of any allowance hereunder, may be given by sending the same through the post in a letter addressed to him at his registered place of address and any notice so sent shall be deemed to be served on the day following that on which it is posted

5. (a) The Trustees shall out of the pension fund from time to time pay all costs charges and expenses incurred in or about the execution of the trusts and provisions of these Rules

(b) The Trustees shall respectively be indemnified against all

liabilities incurred by them in the execution of the trusts hereof and shall have a lien on the fund for such indemnity

Terms and Conditions of Benefit

6. Every Officer and Employee of the Company (a) who has completed not less than 15 years service with the Company and shall attain in the case of males the age of 65 years or in the case of females 60 years, or (b) has completed not less than 25 years' service with the Company and shall without any culpable default on his part become in the opinion of the Trustees incapable of discharging the duties of his office or employment by reason of ill-health or other circumstances shall be entitled on resigning or otherwise ceasing to hold his office or employment with the Company to receive during life unless and until he shall be or become disqualified under Rule 9 to receive or continue to receive a pension under these Rules an annuity or pension according to the scale for the time being applicable to him under these Rules Provided that the Company may at any time direct that any Officer or Employee be credited for the purpose of this Clause with a number of years' service in excess of the number actually served

7. Subject to these Rules the said annuity or pension shall be an amount equal to (a) one half part of the average annual amount of the person's salary or wages during the five years immediately preceding the date of retirement if he shall have completed not less than 40 years' service with the Company and pro rata if he shall have completed less than 40 years' such service or (b) the equivalent pension benefit as defined by the National Insurance Act 1959 [6] whichever is the greater

8. If any officer or employee (a) shall die while in the service of the Company after having completed ten years' service or (b) being eligible for an annuity or pension under these Rules shall die after leaving the service of the Company or (c) shall before becoming so eligible retire through physical or mental incapacity then and in every such case the Trustees may pay to

[6] See s. 8 (1) (*d*) of the Act, which in effect provides that the "equivalent pension benefit" is to be not less than the maximum graduated state pension at a £15-a-week level of earnings.

or apply for the benefit to such Officer or Employee until such time as they are satisfied that the circumstances under which the annuity or pension granted under this Clause no longer apply or as the case may be his widow (during her widowhood) or issue or other dependants up to the age of sixteen years an annuity or pension equal to one half of the annuity or pension which would have been payable to such Officer or Employee under these Rules if he had been eligible to receive the same [7]

9. An annuity or pension or other benefits hereunder shall be personal and inalienable and shall cease to be paid if the recipient shall attempt to alienate charge or assign the same or any part thereof or shall do or suffer any act or thing whereby such annuity or pension if belonging to him absolutely would be wholly or in part payable to another person Provided that the Trustees may in their absolute discretion pay or apply but not to such other person all or any part of the annuity or pension which would but for this Rule have been payable to any pensioner to and for the benefit of such pensioner his wife or issue or other dependants in such shares and manner as the Trustees may think proper

10. Subject to the actuarial position of the said Fund permitting the Trustees may in any year increase the annuity or pension then being paid to any annuitant or pensioner hereunder by a sum not more than [one quarter] [one half] of the annuity or pension then being so paid whenever the circumstances of such annuitant or pensioner shall in the opinion of the Trustees justify the same Provided that no annuity or pension so increased shall exceed two-thirds of the average on which such annuity or pension is based

Actuary

11. The Actuary to the Fund shall be a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland and shall be an Actuary appointed for any particular purpose or

[7] For an alternative clause, see *Re Bibby & Son, Ltd. Pensions Trust Deed* [1952] 2 All E.R. 483, and *A. Herbert, Ltd.* v. *Hancocks* [1960] 1 W.L.R. 271, which also discuss the effect of the trustees' discretion and estate duty saving.

generally for the purposes of the Fund and fees of the Actuary shall be provided out of the Fund The Actuary shall be nominated by the Company subject to the reasonable approval of the Trustees and an Actuary nominated generally for the purposes of the Fund shall hold office until he shall resign or some other Actuary shall have been nominated in his place

12. Once at least in every five years the Fund shall be investigated by the Actuary who shall report in writing to the Trustees as to the solvency thereof and generally upon any matters relevant to these Rules appearing by such investigation

Accounts

13. The Trustees shall cause to be kept full and punctual accounts showing all contributions paid to the Fund and all income arising therefrom and all dealings therewith and all payments made thereout and they shall annually as at the —— of each year cause to be prepared a statement of accounts and balance sheet for the year ending on that date showing the amount of the Fund on that date the total receipts of the Fund for the year and the total of the grants and pensions paid out of the Fund during the year and the said statement of accounts and balance sheet shall be audited and certified by the Auditors of the Company at the cost of the Fund The said summary shall be laid before the Directors of the Company and communicated to such other persons if any as the Board may determine

14. (a) A copy of every statement of accounts, balance sheet and actuarial report signed by the Auditor or Actuary as the case may be and by the Secretary of the Fund shall be sent to the Registrar of Friendly Societies within twelve months after the close of the period to which it relates in accordance with the provisions of the Superannuation and other Trust Funds (Validation) Act 1927

(b) A copy of the Rules of the Fund and of all amendments thereof and of the latest statement of accounts balance sheet and actuarial report shall be supplied on demand to any person having any rights in the Fund

15. The Fund shall be wound up in the following events:

(a) If the Company shall go into liquidation either voluntarily or compulsorily otherwise than for the purpose of reconstruction or amalgamation under the terms of which all obligations of the Company in connection with the Fund are taken over by the new or amalgamated Company and service with such new or amalgamated Company is deemed service with the Company for the purposes hereof and is offered to all Officers and Employees of the Company

(b) If the Company shall notify the Trustees that the Company's contributions to the Fund will be permanently discontinued or

(c) If for any reason it shall appear to the Trustees at any time impracticable or inexpedient to carry on the Fund

General Provisions

16. Nothing contained in these Rules shall affect or restrict the right of the Company to dispense with the service of or discharge any Officer or Employee or to vary the place or manner of his service or employment or the amount of his salary or wages or other remuneration or any other terms of his service or employment in any way in which the same might have been done independently of these Rules

FORM 10

Deed of release by a Mortgagee releasing the deceased Mortgagor's estate from all claims under the mortgage to enable distribution to be made without making provision for the mortgage liability

THIS DEED OF RELEASE is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Mortgagee") of the first part and CD of *etc.* (hereinafter called "Mrs. CD") of the second part and EF of *etc.* and GH of *etc.* (hereinafter called "the Administrators") of the third part

WHEREAS:—

(1) By a Legal Charge (hereinafter referred to as "the said Legal Charge") dated the —— day of —— 19— and made between MCD (hereinafter called "the Mortgagor") of the one part and the Mortgagee of the other part the Mortgagor as beneficial owner thereby charged by way of legal mortgage the property described in the Schedule thereto with the payment to the Mortgagee of the principal moneys together with the interest and other moneys therein covenanted to be paid to the Mortgagee by the Mortgagor

(2) The property described in the Schedule to the said Legal Charge comprises certain freehold property known as Cherry Tree Farm and therein more particularly described (hereinafter called "the Farm")

(3) The Mortgagor died on the —— day of —— 19— intestate and letters of administration in respect of his estate were on the —— day of —— 19— granted out of the Principal Probate Registry to the Administrators

(4) The said Legal Charge was still subsisting and of effect at the date of the Mortgagor's death aforesaid

(5) The Administrators have not since the date of the Mortgagor's death paid to the Mortgagee all the principal moneys interest and other moneys owing to the Mortgagee upon the security of the said Legal Charge and at the date hereof there is owing to the Mortgagee upon the aforesaid security a total sum of

£—— in respect of such principal moneys interest and other moneys aforesaid

(6) Mrs. CD is the widow of the Mortgagor and is accordingly entitled to be paid (*inter alia*) a capital sum of £5,000 out of the Intestate's estate

(7) No part of the said capital sum of £5,000 has yet been paid to Mrs. CD

(8) The Administrators are desirous of appropriating (in exercise of the power in that behalf conferred upon them by section 41 of the Administration of Estates Act 1925) the Farm in or towards satisfaction of the said capital sum of £5,000 payable to Mrs. CD as aforesaid

(9) It is intended that the aforesaid appropriation shall be effected on the footing that the Farm shall be assured to Mrs. CD by the Administrators as the personal representatives of the Mortgagor subject to the said Legal Charge and the principal moneys interest and other moneys secured or intended to be secured thereby

(10) The Administrators have been advised that they cannot carry into effect the transactions referred to and envisaged in recitals (8) and (9) hereof unless the Mortgagee shall first enter into such agreements and grant such releases as are respectively hereinafter contained

(11) The Mortgagee being satisfied with the sufficiency of the security comprised in the said Legal Charge and with certain separate arrangements providing for a substituted covenant for payment of all moneys due or to become due under the said Legal Charge on the part of Mrs. CD has agreed with the Administrators to enter into such agreements and to grant such releases as are respectively hereinafter contained

NOW THIS DEED made in pursuance of and for the purpose of giving effect to the said agreement referred to in the last recital hereof WITNESSETH as follows:—

1. Mrs. CD hereby admits unto the Administrators and also unto the Mortgagee and the Mortgagee hereby acknowledges that at the date hereof there is owing to the Mortgagee upon the security of the said Legal Charge said total sum of £—— hereinbefore referred to but no further or other other sum or sums

2. Subject to the provisions of clause 3 hereof and to the execution by Mrs. CD of a separate Deed of Covenant by Mrs. CD for payment of all moneys due or to become due under the said Legal Charge the Mortgagee hereby:—

(1) Agrees with the Administrators and also with Mrs. CD that he will raise no objection to the Administrators in their capacity as the Mortgagor's personal representatives causing to be vested in Mrs. CD the premises comprised in and subject to the said Legal Charge provided however that such premises shall be expressed to be vested in Mrs. CD subject to the said Legal Charge and to the payment of the moneys (whether principal interest or otherwise) secured or intended to be secured by the said Legal Charge and shall be made pursuant to the proposed appropriation hereinbefore referred to

(2) Further agrees with the Administrators that henceforth he will treat and consider the premises comprised in and subject to the said Legal Charge as the only security for the moneys whether principal interest or otherwise owing to him under and by virtue of the covenants on the part of the Mortgagor contained and set out in the said Legal Charge to the intent and so that henceforth the Administrators may and shall be entitled to deal with the remainder of the Intestate's estate on the footing that they as the Intestate's personal representatives need not retain or treat any part thereof as a fund available for the payment to the Mortgagee of any moneys (whether principal interest or otherwise) owing to the Mortgagee by the Mortgagor at the time of his death or by the Administrators as the Intestate's personal representatives

(3) Releases the estate and effects of the Mortgagor save and except the premises comprised in and subject to the said Legal Charge from all claims or liability whatsoever for or in respect of any moneys due or falling due thereunder either during the Mortgagor's life or since the date of the Mortgagor's death

(4) Further releases and forever discharges the Mortgagor his executors and administrators estate and effects from all or any claims and demands whatsoever which but for this present release the Mortgagee might or would have had or might or would have been entitled to make against the Mortgagor or his

personal representatives for or in respect of the moneys (whether principal interest or otherwise) referred to in sub-clause (3) last hereinbefore contained or any of such moneys

3. PROVIDED ALWAYS and it is hereby agreed and declared that the several agreements and releases on the part of the Mortgagee contained and set out in clause 2 hereof are made and given by the Mortgagee on the footing and subject to the condition that the appropriation referred to and envisaged in recitals (8) and (9) hereinbefore set out shall be made and duly carried into effect within a period of not more than six months from the date of this Deed and that if (but not otherwise) such appropriation shall not have been made and duly carried into effect within the aforesaid six months' period such agreements and releases and each of them shall as from the date of the expiration of such six months' period become and be void and of no effect

IN WITNESS, *etc.*

FORM 11

Settlement to avoid income tax and sur-tax for the benefit of the settlor's children and issue who are to take vested interests in the capital by instalments [1]

(Drafted by Ernest H. Scamell)

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Settlor") of the one part and CD of *etc.* EF of *etc.* and GH of *etc.* (hereinafter called "the Trustees") of the other part

WHEREAS:—

(1) The Settlor intermarried with XAB on the —— day of —— 19— and there have up to the date hereof been issue of such marriage —— children only namely ——

(2) The Settlor is desirous of declaring such trusts for the benefit of his said children and of any and every other child who

[1] In order to satisfy the provisions of section 228 of the Income Tax Act, 1952, but to postpone payment of capital, the trusts of the income and of the capital have been separated.

may hereafter be born of the said marriage and also of his remoter issue and their spouses as are hereinafter contained

(3) With a view to the settlement herein contained the Settlor has paid to the Trustees the sum of £—— sterling and it is anticipated that the Settlor may hereafter cause to be paid or transferred to the Trustees or that the Trustees may otherwise receive further moneys investments or other property to be held upon the trusts and with and subject to the powers and provisions hereinafter declared of and concerning the same

Now in pursuance of the said desire and in consideration of the premises THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. In this Settlement the following expressions shall unless the context otherwise requires have the following meanings that is to say:—

(1) "the Trustees" shall mean the Trustees and the survivors or survivor of them or other the trustees or trustee for the time being hereof

(2) "the Trust Fund" shall mean the said sum of £—— sterling and all moneys investments and property paid or transferred to and accepted by the Trustees upon the trusts and with and subject to the powers and provisions of this settlement and the moneys investments and property from time to time and for the time being representing the said moneys investments and property or any part or parts thereof

(3) "the Beneficiaries" or "Beneficiaries" shall mean the said [*children of AB*] and any and every other child hereafter born of the marriage of the Settlor and the said XAB and "a Beneficiary" or "Beneficiary" shall mean one of the Beneficiaries

(4) "the Specified Period" shall mean the period of time ending on the expiration of 21 years from the death of the last survivor of the descendants now living of His late Majesty King George the Fifth and such further period (if any) as may for the time being be permitted without infringing the rule against perpetuities

(5) "the qualifying conditions" shall mean the conditions set forth in clause 6 hereof

2. The Trustees shall stand possessed of the Trust Fund upon trust either to retain the same in the form of the moneys investments and property for the time being constituting the Trust Fund or at any time or times and from time to time at their discretion to apply or realise and vary the said moneys investments and property in the manner hereby authorised

3. The Trustees shall receive and stand possessed of the income of the Trust Fund upon the trusts and with and subject to the powers and provisions following that is to say:

(1) Upon trust to divide the same into as many shares as there shall at the respective dates of accrual thereof be Beneficiaries and to appropriate one of such shares to each of the Beneficiaries but so as to secure that the size (if any) of the share appropriated to any Beneficiary shall bear the same proportion to the said income as the proportion which the aggregate of that Beneficiary's presumptive or vested shares or interests for the time being in the capital of the Trust Fund bare at the respective dates of such accrual to the Trust Fund Provided that for the purposes of this sub-clause a Beneficiary shall be deemed to have been entitled to a presumptive or vested share or interest in the capital of the Trust Fund if he or she would have been entitled to such a share or interest apart from his or her failure to satisfy the qualifying conditions and in any such case the size of the presumptive share or interest of every other Beneficiary shall for the said purposes be determined as if such Beneficiary aforesaid had satisfied the qualifying conditions and for all purposes of appointment hereunder the income of the Trust Fund shall be deemed to have accrued from day to day [2]

(2) The Trustees shall hold the share of income appropriated to each Beneficiary as aforesaid upon and subject to the following trusts powers and provisions that is to say:

(a) Until the Beneficiary shall attain the age of 21 years or marry under that age [2] upon trust to accumulate the same in

[2] It would not be safe to make "the qualifying conditions" applicable to the income accruing before the attainment by a beneficiary at the age of 21 since the effect might be to take accumulations of income outside the provisions of s. 228 of the Income Tax Act, 1952. As to the disposal of income accruing after the age of 21, see clause 3 (2) (b) (ii), *post*.

the way of compound interest by investing the same and the resulting income thereof from time to time in the manner hereby authorised Provided that the Trustees may from time to time at their sole discretion in lieu of accumulating the same in manner aforesaid pay to the Beneficiary's parent or guardian (if any) or otherwise apply for or towards his or her maintainance education or benefit the whole or such part if any of the said share of income as may in all the circumstances appear to the Trustees to be reasonable and so that any accumulations already made may during the period aforesaid also be applied if the Trustees think fit as if they fell to be dealt with as current income hereunder.

(b) If and when the Beneficiary shall attain the age of 21 years or shall marry before attaining such age the Trustees shall:

(i) hold the said accumulations of income in trust for such Beneficiary absolutely and so that the receipt of such Beneficiary after marriage and though still an infant shall be a good discharge to the Trustees and

(ii) if and so long as such Beneficiary shall satisfy the qualifying conditions pay to him or her the whole of the said share of income

(c) Subject to the trusts declared by paragraph (b) (i) of this sub-clause the Trustees shall hold the said accumulations of income as an accretion to the capital of the Trust Fund

4. Subject to the trusts powers and provisions hereinbefore declared and contained the Trustees shall stand possessed of the capital of the Trust Fund upon trust to divide the same into four equal shares and to hold such shares upon the respective trusts and with and subject to the respective powers and provisions following that is to say:—

(1) The Trustees shall hold one of such shares upon trust for such one or more of the Beneficiaries and if more than one as tenants in common in equal shares as shall within the Specified Period attain the age of 25 years and shall up to the attainment of the said age have satisfied the qualifying

conditions [3] Provided that if a Beneficiary shall die during the Specified Period before attaining a vested interest in such share under the foregoing provisions hereof leaving a widow or issue him surviving and such deceased Beneficiary shall up to the date of his death have satisfied the qualifying conditions the share of such share to which such deceased Beneficiary would have become entitled had he or she attained a vested interest shall as from the date of such death vest in and be held by the Trustees as a fund (hereinafter called "the subsidiary Trust Fund") separate and distinct from the Trust Fund upon the following subsidiary trusts that is to say:

(a) If such deceased Beneficiary being a male shall have died leaving a widow but no issue him surviving upon trust during the Specified Period to pay the income of the Subsidiary Trust to such deceased Beneficiary's widow during her life or until her remarriage and subject thereto as to the capital hereof to hold the same as an accretion to the share of the capital of the Trust Fund out of which the Subsidiary Trust Fund was originally derived and as to the income thereof (subject to the last mentioned trusts) as if the same formed part of the income of the Trust Fund

(b) If such deceased Beneficiary being a male shall have died leaving a widow and issue him surviving or *en ventre sa mère* and duly born thereafter upon trust during the Specified Period to pay the income of the Subsidiary Trust Fund as to one equal half part thereof to such deceased Beneficiary's widow during her life or until her remarriage and as to the other equal half part thereof to divide the same into as many shares as there shall at the respective dates of accrual thereof be children of such deceased Beneficiary then in existence and to appropriate one of such shares to each of such children and hold the same upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained of and concerning the share of income of the Trust Fund appropriated to each Beneficiary in the same manner in all respects as if

[3] *i.e.*, each Beneficiary gets one-quarter of the capital on his or her attaining the age of 25. The remaining three-quarters are dealt with by sub-clauses (2) (3) and (4).

the same were repeated herein but with the substitution of references to "child of such deceased Beneficiary" for references to "Beneficiary" and of references to "Subsidiary Trust Fund" for references to "Trust Fund" And subject thereto the Trustees shall stand possessed of the capital of the Subsidiary Trust Fund upon trust for such of the children of such deceased Beneficiary and if more than one as tenants in common in equal shares as shall during the Specified Period attain the age of 25 years and shall up to the attainment of such age have satisfied the qualifying conditions Provided that if at the end of the Specified Period any one or more of such children shall have attained the age of 21 years but shall not have attained the age of 25 years such children shall take as if they had attained the age of 25 years and subject thereto as to the capital thereof upon trust to hold the same as an accretion to the share of capital of the Trust Fund out of which the Subsidiary Trust Fund was originally derived and as to the income thereof (subject to the last-mentioned trusts) as if the same formed part of the income of the Trust Fund

(c) If such deceased Beneficiary being a male shall have died leaving issue but no widow him surviving or being a female shall have died leaving issue (whether or not also leaving a widower her surviving) upon trust during the Specified Period to divide the income of the Subsidiary Trust Fund into as many shares as there shall at the respective dates of accrual thereof be children of such deceased Beneficiary then in existence and to appropriate one of such shares to each of such shares to each of such children and hold the same upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained of and concerning the share of income of the Trust Fund appropriated to each Beneficiary in the same manner in all respects as if the same were repeated herein but with the substition of references to "child of such deceased Beneficiary" for references to "Beneficiary" and of references to "Subsidiary Trust Fund" for references to "Trust Fund" And subject thereto the Trustees shall stand possessed of the capital of the Subsidiary Trust Fund upon trust

for such of the children of such deceased Beneficiary and if more than one as tenants in common in equal shares as shall during the Specified Period attain the age of 25 years and shall upon the attainment of such age satisfy the qualifying conditions Provided that if at the end of the Specified Period any one or more of such children shall have attained the age of 21 years but shall not have attained the age of 25 years such children shall take as if they had attained the age of 25 years And subject thereto as to the capital thereof upon trust to hold the same as an accretion to the share of capital of the Trust Fund out of which the Subsidiary Trust Fund was originally derived and as to the income thereof (subject to the last mentioned trust) as if the same formed part of the income of the Trust Fund

(2) The Trustees shall hold one further share of the capital of the Trust Fund upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained of and concerning the share of capital referred to in sub-clause (1) of this Clause in the same manner in all respects as if the same were repeated herein but with the substitution of a reference to the age of "30 years" for the reference to the age of "25 years" where such reference first appears but not elsewhere Provided that

(a) where in accordance with the provisions hereinafter contained the Trustees shall have paid or transferred to a Beneficiary any moneys investments or property in satisfaction of such Beneficiary's vested interest in any other share or shares of the capital of the Trust Fund or the Trustees shall hold any Subsidiary Trust Fund or Funds on the Subsidiary Trusts hereinbefore declared then the moneys investments and property so paid or transferred or held as a Subsidiary Trust Fund or Funds shall be brought into account and for the purpose of ascertaining the value and extent of any vested interest or share in the capital of the Trust Fund to which this present subclause applies such share of the capital shall be aggregated with such share or shares of the capital or Subsidiary Trust Fund or Funds last hereinbefore referred

(b) If and to the extent that the trusts powers and provisions herein declared and contained of and concerning the share of capital to which this sub-clause applies shall fail the Trustees shall hold the said share of capital or the residue thereof upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained of and concerning the share of capital referred to in the sub-clause hereof immediately preceding this sub-clause and as one fund with such share for all purposes

(3) The Trustees shall hold one further share of the capital of the Trust Fund upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained of and concerning the said share of capital referred to in sub-clause (1) of the this Clause in the same manner in all respects as if the same were repeated herein but with the substitution of a reference of the age of "35 years" for the reference to the age of "25 years" where such reference first appears but not elsewhere and with the addition of the provisos lettered (a) and (b) contained in sub-clause (2) of this Clause

(4) The Trustees shall hold the remaining share of the capital of the Trust Fund upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained of and concerning the said share of capital referred to in sub-clause (1) of this Clause in the same manner in all respects as if the same were repeated herein but with the substitution of a reference to the age of "40 years" for the reference to the age of "25 years" where such reference first appears but not elsewhere and with the addition of the provisos lettered (a) and (b) contained in sub-clause (2) of this Clause

5. Subject to the Trusts hereinbefore declared and to any exercise of the powers hereby or by law conferred on the Trustees the Trustees shall hold the capital and income of the Trust Fund upon trust to pay or transfer the same to PQ absolutely

6. The qualifying conditions in relation to any person prospectively entitled to a beneficial interest under any of the provisions of this Deed shall be all or such one or more of the

following conditions as shall not be void for uncertainty or for any other reason, namely:

(1) That such person shall be a member of the —— —— Church

(2) That such person shall not have entered into a marriage other than a marriage in accordance with the rites and doctrines of the —— —— Church

(3) That such person shall not have done or attempted to do or suffered any act or thing other than to consent to any advance under the power of advancement herein contained or otherwise applicable hereto whereby if an interest under the provisions of this Deed were to vest in such person he or she would be deprived of the right to receive the same or any part thereof for his or her own absolute use and benefit free from incumbrances and restrictions of any kind

(4) That such person shall not be an undischarged bankrupt

7. Upon the attainment by any person of a vested interest in any share of the capital of the Trust Fund or of any Subsidiary Trust Fund under the provisions of this Deed the Trustees may and on the request in writing of such person served on the Trustees in this behalf shall pay or transfer to such person absolutely the capital of his or her vested interest ascertained as at the date when such interest vested and disregarding the possibility of such capital being diminished by an increase in the class of persons who may be or become entitled to an interest in any such share of capital and the power of appropriation hereinafter contained shall apply accordingly

8. The Trustees may in relation to the whole or any part or parts of the Trust Fund or any Subsidiary Trust Fund exercise the powers of appropriation conferred by section 41 of the Administration of Estates Act 1925 on personal representatives without any of the consents made requisite by that Act

9. Notwithstanding the trusts powers and provisions hereinbefore declared and contained of and concerning the Trust Fund or any Subsidiary Trust Fund the Trustees shall have full power in their absolute discretion at any time or times to raise the whole or any part or parts of the capital of the presumptive share or interest in the Trust Fund or any Subsidiary Trust

Fund or in any share of such Funds of any person who shall for the time being be contingently entitled to such presumptive share or interest and pay or apply the same as the Trustees shall in their absolute discretion think fit for the maintenance advancement or benefit of such person and such application may be made notwithstanding that the interest of such person may be liable to be defeated on the happening of any event or events or to be diminished by the increase of the class to which he belongs

Provided that:—

(1) If such person shall attain a vested interest in the Trust Fund or any Subsidiary Trust Fund or in any share of such Funds the capital so raised and applied shall be brought into account as part of the capital of such vested interest and

(2) No such payment or application shall be made so as to prejudice any person entitled to any prior interest in the capital to be so paid or applied unless such person is in existence and of full age and consents in writing to such payment or application

10. Moneys falling to be invested under the trusts and provisions hereof may be invested or applied in the purchase of or at interest upon the security of such stocks funds securities or other investments or property of whatever nature and wheresoever situate (including the purchase and and also the application of moneys for the improvement of a freehold or leasehold dwelling-house for use as a residence) and whether involving liability or not or upon such personal credit with or without security as the Trustees shall in their absolute discretion think fit

11. The Trustees shall have power:—

(1) To make such arrangements upon the reconstruction of any company in which they hold stocks shares or securities as trustees hereof as if they were the absolute owners of such stocks or securities

(2) To release part of any property subject to a security held on the trusts hereof if satisfied that the remaining security is sufficient to cover all moneys remaining due thereon and to vary the terms of any such security

12. (1) A trust corporation may at any time be appointed

to be a trustee or a sole trustee hereof and either generally or as a custodian trustee

(2) Where any trust corporation (other than the Public Trustee) is appointed as aforesaid it may charge retain and be paid such reasonable remuneration and charges as shall be agreed in writing prior to or upon such appointment by and between the person or persons making such appointment and the trust corporation so appointed

13. The power of appointing a new trustee or new trustees hereof and of removing a trustee for the time being hereof shall be vested in a majority for the time being of the Trustees or if there shall be only one trustee for the time being constituting the Trustees in such trustee and the provisions of section 36 of the Trustee Act 1925 in regard to the appointment and removal of trustees shall have effect accordingly

14. Any Trustee for the time being hereof (other than and except the Settlor) being a solicitor accountant or other person engaged in any profession or business shall be entitled to charge retain and be paid all usual professional or proper charges for business transacted time expended and acts done by him or his firm in connection with the trusts hereof including matters which might or should have been attended to in person by a trustee not being a solicitor accountant or other person so engaged

15. Notwithstanding anything to the contrary hereinbefore expressed or implied no discretion or power conferred by this Deed on any person or on the Trustees shall be exercised so as to cause any part of the income or capital of the Trust Fund or any other benefit whatsoever to become payable to or applicable for the benefit of the Settlor or any spouse of the Settlor

RENTCHARGES IN REGISTERED CONVEYANCING

FORM 12

Transfer of a Building Plot being Part of the Land in a Title in consideration of a Rentcharge [1]

(Drafted by Theodore B. F. Ruoff)

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....
Title No. .....
Property .....

[Date] 1. In consideration of [—— pounds (£—) and of] the perpetual yearly rentcharge of £—— hereafter created I [*registered proprietor*] of *etc.* (hereinafter called "the Transferor") [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [2] being part of the land comprised in the title above referred to [TOGETHER with the easements and rights set out in the First Schedule and EXCEPT and RESERVING the easements and rights set out in the Second Schedule hereto]

2. The Transferee hereby grants [3] to the Transferor a

[1] There is no statutory form for transferring land in consideration of a rentcharge although the transaction is not uncommon. This form is based upon form 20 in the Schedule to the Land Registration Rules, 1925, combined with form 46 therein, with some additions which may be found useful, such as the conferring of an absolute power of re-entry. The transfer (which need not be executed in duplicate) should be lodged, with *two* certified copies, under application cover A.5. Fees: under scale 2 on the amount of the rentcharge plus a fee under scale 4 on any additional purchase price for registering the transfer. Further fee under scale 1 on 20 times the amount of the rentcharge for registering it (see Land Registration Fee Order, 1930, abatement 7 and Fee Order Rule 11). The rentcharge will then be noted as an incumbrance against the transferee's title and the rentowner will be given a rentcharge certificate under a separate title (rr. 107, 108).

[2] The plan must be signed by the transferor and by (or on behalf of) the transferee.

[3] Form 46 in the Schedule to the Land Registration Rules, 1925, directly grants a rentcharge although a reservation by way of implied grant is employed in Form No. 6 in Sched. V to the Law of Property Act, 1925.

perpetual yearly rentcharge of —— pounds (£—) to accrue from day to day and to be paid free from all deductions (except income tax) by equal [half-yearly] payments on the —— day of —— and the —— day of —— in every year the first payment to be made on the —— day of —— next and to be for ever charged upon and issuing out of the land hereby transferred [TOGETHER with the powers and remedies for securing and compelling payment of the said rentcharge additional to those conferred by section 121 of the Law of Property Act 1925 hereinafter mentioned]

3. The Transferee hereby covenants with the Transferor:

(a) To pay the said yearly rentcharge in the manner and at the times hereinbefore appointed for payment thereof

(b) At his own cost within [six] calendar months from the date hereof to erect and complete fit for habitation and to the satisfaction of the Transferor a substantial dwelling-house of brick set with lime mortar and covered in with good tiles with all proper outbuildings and conveniences of the annual letting value of at least £——

(c) At all times after the erection of the said dwelling-house to keep it and its appurtenances and all sewers drains walls fences and outbuildings in good and substantial repair and once at least in every year upon receipt of not less than [ten] days' previous written notice in that behalf to permit the Transferor and his successors in title and his and their agents to enter in the daytime into and upon the said dwelling-house and premises and to view the condition thereof and to make good within [two] calendar months after notice in writing all defects in repair then found and if the Transferee shall fail to repair the property in accordance with such notice to permit the Transferor to enter into and upon the land hereby transferred and execute and do such works as in the opinion of the Transferor are necessary and to remain in possession of the said premises and receipt of the rents and profits until thereby or otherwise all sums of money expended by the Transferor on such works together with all costs and expenses in connection therewith shall have been fully paid and satisfied

(d) To insure and keep insured the said dwelling-house and

premises against loss or damage by fire in the —— Office or some other insurance office approved of in writing by the Transferor in the sum of £—— at least and to pay all premiums payable in that behalf within [seven] days after the same shall have become due and further at any reasonable time of the day at the request of the Transferor to produce to him or his agent the policy of insurance and the receipt for the current premium and in case of damage by fire to rebuild and reinstate the said dwelling-house and outbuildings within [one year] of any such damage having occurred

[(e) To give notice in writing to the Transferor of any sale of the land hereby transferred or any part thereof within [one] calendar month of such sale]

[(f) Not to make any structural alterations to any building or erect any new building on the land hereby transferred without the previous approval in writing of the Transferor to the plans and specifications thereof and to make all such alterations or erect such new buildings in strict conformity with such plans and specifications]

[4. It shall be lawful for the Transferor or for the persons from time to time deriving title under him to the said rentcharge to re-enter into and upon the land hereby transferred or any part thereof in the name of the whole and to repossess and enjoy the same as if this transfer had never been made [4] in any of the following events:

(a) If the said rentcharge or any part thereof [5] shall at any time or times hereinafter be unpaid for [six calendar months] after any of the days appointed for payment thereof although no legal demand therefor shall have been made [6]

[4] The existence of this absolute power of re-entry does not prevent the registered estate of the transferee from being a fee simple absolute (Law of Property Act, 1925, s. 7 (1), as added to by the Law of Property (Amendment) Act, 1926, s. 7 and Sched.). The power does not require to be limited to the period of the perpetuity rule (see the Law of Property Act, 1925, s. 4 (3) and, especially, the wording of the Land Registration Act, 1925, s. 18 (2)). The power is a legal interest (Law of Property Act, 1925, s. 1 (2) (*e*)), which belongs to the registered rentowner without being specially mentioned on his title to the rentcharge (see the Land Registration Act, 1925, s. 20 (1)).

[5] *Cf. Havergill* v. *Hare* (1618) Cro.Jac. 510.

[6] *Cf. Doe* d. *Biass* v. *Horsley* (1834) 3 N. & M. 567.

(b) If and so often as the Transferee or his successors in title shall fail to observe or perform any other of the covenants contained in [sub-clauses —— of] clause 3 hereof notwithstanding any actual or constructive waiver of his or their default by the Transferor or his successors in title]

5. The Transferee to the intent and so as to bind the land hereby transferred into whosesoever hands the same may come and to benefit and protect the remainder of the land comprised in the title referred to and every part thereof [*or otherwise as the case may be*] and so that this covenant shall be enforceable by the Transferor and his successors in title or other the owner or owners for the time being of the said remaining land or any part thereof hereby covenants [7] with the Transferor that the Transferee and his successors in title will at all times observe and perform the stipulations and restrictions set out in the [Third] Schedule hereto [PROVIDED ALWAYS that upon his ceasing to have any estate or interest in the land hereby transferred the Transferee shall thenceforth be absolved from any personal liability for any breach of the said stipulations that may thereafter be committed in relation to the land hereby transferred]

[6. *Certificate as to value, if requisite*]

[The First Schedule]

Easements and rights granted to the Transferee

[The Second Schedule]

Easements and rights excepted and reserved

The [Third] Schedule

Restrictive stipulations

[*To be executed by both parties and attested*]

[7] It seems clear that the benefit of restrictive covenants cannot run with a rentcharge, particularly if the rentowner is not an assign of the covenantee (see, *e.g.*, *Haywood* v. *Brunswick Building Society* (1881) 8 Q.B.D. 403; *Torbay Hotel, Ltd.* v. *Jenkins* [1927] 2 Ch. 225, 239). For this reason alone the restrictive covenants should not be lumped together with the positive covenants for the preservation of the security.

FORM 13

Transfer of Part of the Land in a Title subject to a Rentcharge which is Informally Apportioned [8]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[Date] 1. In consideration of —— pounds (£) the receipt of which is hereby acknowledged I [*registered proprietor*] of *etc.* (hereinafter called "the Transferor") [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [9] known as —— being part of the land comprised in the title above referred to subject to the sum of £—— being an apportioned part of the yearly rentcharge mentioned in clause 2 hereof

2. The Transferor and the Transferee hereby mutually agree and declare that the perpetual yearly rentcharge of £—— created by a [Conveyance] dated *etc.* and charged upon and issuing out of the land comprised in the title above referred to shall henceforth be apportioned as follows:

The yearly sum of £—— (part of the said rentcharge) shall henceforth [*or* from the —— day of —— next] be charged on the land hereby transferred in exoneration of the land [*or* the part of the land subject thereto] remaining in the title above referred to [10]

[8] See p. 218, *ante.*

[9] The plan must be signed by the transferor and by (or on behalf of) the transferee.

[10] The definition of "conveyance" in the Law of Property Act, 1925, s. 205 (1) (ii), referring, as it does, to "every other assurance of property or of an interest therein by any instrument, except a will," inevitably embraces a Land Registry transfer, so that the remedies of distress and entry for perception in default of payment of the equitably apportioned sums will be conferred by virtue of these provisions in the transfer, in pursuance of s. 190 (1) and (2) of the Law of Property Act, 1925.

The yearly sum of £—— (part of the said rentcharge) shall henceforth [*or* from the —— day of —— next] be charged on the land [*or* the part of the land subject thereto] remaining in the title above referred to in exoneration of the land hereby transferred

3. The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall be implied in this deed[11] [*or* The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall not be implied in this deed] [*or* The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall be implied in this deed with the following modifications namely (*set out modifications of the covenants, as, for example*):] [The covenants by the conveying party shall not be implied in this deed]

4. The Transferee charges the land hereby transferred and the Transferor charges the land remaining in the title above referred to [*or* the part of the land subject to the said rentcharge remaining in the title above referred to] with the payment of such sums respectively as shall henceforth become payable in respect of the covenants on the part of each of them implied under the provisions of section 77 of the Law of Property Act 1925

[5. *Certificate as to the value, if requisite*]

[*To be executed by both parties and attested*]

[11] It is true that the covenants implied under s. 77 of the Law of Property Act, 1925, appear to be implied in this transfer by virtue of the badly worded provisions of r. 109 of the Land Registration Rules, 1925. Nevertheless the provisions of sub-r. (4) of r. 77, *ibid.*, appear to conflict with those of r. 109 so that it is suggested *ex abundante cautela* that this clause should be inserted. In any event, so far as the covenants implied on the part of the transferor are concerned, he must either transfer "as beneficial owner" or transfer "as trustee," etc., *and* also refer to s. 77 of the Law of Property Act, 1925 (see *ibid.*, ss. 77 (1) (B) (ii), 77 (4).

FORM 14

Transfer of Part of the Land in a Title subject to a Rentcharge which is Formally Apportioned [12]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[Date] 1. In consideration of —— pounds (£—) the receipt of which is hereby acknowledged I [*registered proprietor*] of *etc.* (hereinafter called "the Transferor" [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [13] known as —— being part of the land comprised in the title above referred to subject to the sum of £—— being an apportioned part of the yearly rentcharge mentioned in clause 2 hereof

2. The Transferor and the Transferee declare that the perpetual yearly rentcharge of £—— created by a [Conveyance] dated *etc.* and charged upon and issuing out of the land comprised in the title above referred to shall henceforth be apportioned as follows:

The yearly sum of £—— (part of the said rentcharge) shall henceforth [*or* from the —— day of —— next] be charged on the land hereby transferred in exoneration of the land [*or* the part of the land subject thereto] remaining in the title above referred to

The yearly sum of £—— (part of the said rentcharge) shall henceforth [*or* from the —— day of —— next] be charged on the land [*or* the part of the land subject thereto] remaining in the title above referred to in exoneration of the land hereby transferred

[12] See p. 222, *ante*.
[13] The plan must be signed by the transferor and by (or on behalf of) the transferee.

3. I [*rentowner*] of *etc.* (hereinafter called "the Rentowner") the registered proprietor under title no. —— of the said rentcharge of £—— hereby consent to the apportionment effected in clause 2 above and henceforth [*or* from the —— day of ——] release the land hereby transferred from the said yearly sum of £——

4. The Transferee for himself and his successors in title hereby covenants with the Rentowner and his successors in title that he the Transferee will henceforth pay on the dates upon which payment of the said rentcharge is due the yearly sum of £—— being the apportioned part of the said rentcharge charged on the land hereby transferred and will observe and perform all the covenants and conditions relating to the said rentcharge and referable to the said apportioned part thereof and the property upon which the same is now charged contained in the [Conveyance] referred to in clause 2 above

5. The Transferor for himself and his successors in title hereby covenants with the Rentowner and his successors in title that he the Transferor will henceforth pay on the dates upon which payment of the said rentcharge is due the yearly sum of £—— being the apportioned part of the said rentcharge charged on the land [*or* the the part of the land subject thereto] remaining in the title above referred to and will observe and perform all the covenants and conditions relating to the said rentcharge and referable to the said apportioned part thereof and the property upon which the same is now charged contained in the [Conveyance] referred to in clause 2 above

[6. *Certificate as to value if requisite*]

[*To be executed by all parties and attested*]

FORM 15

Transfer of Part of the Land in a Title in consideration of a Rentcharge but free from an Overriding Rentcharge [14]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[Date] 1. In consideration of the perpetual yearly rentcharge of £—— hereinafter created I [*registered proprietor*] of *etc.* (hereinafter called "the Transferor") [as beneficial owner [15]] hereby transfer to [*purchaser*] of *etc.* (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [16] known as —— being part of the land comprised in the title above referred to exonerated as from the date hereof from the payment of the whole or any part of the rentcharge of £——created by a [Transfer] dated *etc.* (hereinafter called "the overriding rentcharge") but subject to the observance and performance by the Transferee of the covenants therein contained other than those for payment of the entire rentcharge and the maintenance of the premises charged therewith so far as they relate to the land hereby transferred.

2. The Transferor and the Transferee hereby agree and declare that as from the date hereof the said entire overriding rentcharge shall be and the same is hereby charged exclusively upon the residue of the land formerly subject thereto and

[14] This transfer need not be executed in duplicate but should be lodged, with *two* certified copies, under application cover A.5. Fees: under scale 2 on the amount of the rentcharge for registering the transfer, plus a fee under scale 1 on 20 times the amount of the rentcharge for registering it (Land Registration Fee Order, 1930, abatement 7 and Fee Order Rule 11). The rentcharge will then be noted as an incumbrance against the transferee's title and the rentowner will be given a rentcharge certificate under a separate title (rr. 107, 108).

[15] See note 11 to Form 13, p. 704, *ante*.

[16] The plan must be signed by the transferor and by (or on behalf of) the transferee.

retained by the Transferor in exoneration of the land hereby transferred [17]

3. The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall be implied in this deed [18] and the Transferor charges the land remaining in the title above referred to with the payment of all sums which shall henceforth become payable in respect of the covenants on his part so implied

4. The Transferee hereby grants [19] to the Transferor a perpetual yearly rentcharge of —— pounds (£—) to accrue from day to day and to be paid free from all deductions (except income tax) by equal [half-yearly] payments on the —— day of —— and the —— day of —— in every year the first payment to be made on the —— day of —— next and to be for ever charged upon and issuing out of the land hereby transferred TOGETHER with the powers and remedies for securing and compelling payment of the said rentcharge conferred by section 121 of the Law of Property Act 1925

5. The Transferee hereby covenants with the Transferor:—

(a) To pay the said yearly rentcharge hereby created in the manner and at the times hereinbefore appointed for payment thereof

(b) At his own cost within [six] calendar months from the date hereof to erect and complete fit for habitation and to the satisfaction of the Transferor a substantial dwelling-house of brick set with lime mortar and covered in with good tiles with all proper outbuildings and conveniences of the annual letting value of at least £——

(c) At all times after the erection of the said dwelling-house to keep it and its appurtenances and all sewers drains walls

[17] One effect of exonerating the land transferred from the entire rentcharge is that powers of distress and entry for perception will be conferred upon the transferee in case of default (Law of Property Act, 1925, s. 190 (1) (*b*), (2)), and that the successors in title of the transferee will enjoy the benefit of the powers without express assignment (*ibid.* s. 189 (2)). In view of the doubts, previously mentioned, about the effect of rr. 77 and 109 of the Land Registration Rules, 1925, a reference to the covenants implied the Law of Property Act, 1925, s. 77 (2) and Sched. II, Pt. VIII, para. (ii), should be inserted in the deed.

[18] See last note.

[19] See note 3 to Form 12, p. 699, *ante*.

fences and outbuildings in good and substantial repair and once at least in every year upon receipt of not less than [ten] days' previous written notice in that behalf to permit the Transferor and his successors in title and his and their agents to enter in the daytime into and upon the said dwelling-house and premises and to view the condition thereof and to make good within [two] calendar months after notice in writing all defects in repair then found and if the Transferee shall fail to repair the property in accordance with such notice to permit the Transferor to enter into and upon the land hereby transferred and execute and do such works as in the opinion of the Transferor are necessary and to remain in possession of the said premises and receipt of the rents and profits until thereby or otherwise all sums of money expended by the Transferor on such works together with all costs and expenses in connection therewith shall have been fully paid and satisfied

(d) To insure and keep insured the said dwelling-house and premises against loss or damage by fire in the —— Office or some other insurance office approved of in writing by the Transferor in the sum of £—— at least and to pay all premiums payable in that behalf within [seven] days after the same shall have become due and further at any reasonable time of the day at the request of the Transferor to produce to him or his agent the policy of insurance and the receipt for the current premium and in the case of damage by fire to rebuild and reinstate the said dwelling-house and outbuildings within [one year] of any such damage having occurred

[(e) To give notice in writing to the Transferor of any sale of the land hereby transferred or any part thereof within [one] calendar month of such sale]

6. If the Transferee shall at any time or times hereafter be called upon to pay and shall pay the overriding rentcharge or any part thereof or shall incur or sustain any losses costs charges damages or expenses by reason of the non-payment thereof or any part thereof then and in any such case it shall be lawful for the Transferee to retain [20] the perpetual yearly rentcharge hereby created or any part thereof and in case such last mentioned rent-

[20] As to this power of retainer, see p. 224, *ante*.

charge shall be insufficient to reimburse the Transferee in respect of all such losses costs charges damages and expenses then and in every such case it shall be lawful for the Transferee to enter into and distrain upon the property subject to the overriding rentcharge and not hereby transferred for the amount so paid sustained or incurred and the costs of and attending such distress and to sell and dispose of the distress so taken as landlords are authorised to do in case of distress taken for nonpayment of rent

[7. The Transferor (in addition to the remedy granted in clause 6 hereof) hereby grants unto the Transferee full power and authority to enter into and upon and hold the property subject to the overriding rentcharge and not hereby transferred and to collect and retain the rents and profits thereof or any part thereof until he shall have been fully reimbursed in respect of all his losses costs charges damages and expenses and all expenses attending every such entry and collection of rents and profits AND for the purposes aforesaid the Transferor irrevocably appoints the Transferee his attorney with full authority to exercise all and every the powers granted by this clause [21]]

[8. The powers of entry and distress (in clause 6 hereof) [and collection of rents and profits (in clause 7 hereof)] shall as regards such portions of the land subject to the overriding rentcharge and not hereby transferred as shall have already or may hereafter be transferred by the Transferor his predecessors or successors in title be exercisable only in respect of and be limited to the collection of the perpetual yearly rentcharges made payable by the transfers by which the said portions of the property subject to the overriding rentcharge and not hereby transferred may have been or may hereafter be transferred]

[9. *Certificate as to value if requisite*]

[*To be executed by both parties and attested*]

[21] Normally it will be considered sufficient to give a power of collection as an alternative to, rather than in addition to, the power of retainer. As to the reason for giving an irrevocable power of attorney, see p. 224, *ante*, and the Law of Property Act, 1925, ss. 126 and 128.

FORM 16

Transfer of Part of the Land in a Title subject to a Rentcharge the entirety of which is charged on the land transferred [22]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[Date] 1. In consideration of —— pounds (£—) the receipt of which is hereby acknowledged I [*registered proprietor*] of *etc.* (hereinafter called "the Transferor") [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [23] being part of the land comprised in the title above referred to subject to and charged as from the date hereof with the payment of the entire rentcharge of £—— created by a [Transfer] dated *etc.* and subject to the observance and performance by the Transferee of the covenants including the covenant to pay the entire rentcharge and conditions contained in the said [Transfer] so far as they relate to the land hereby transferred

2. The Transferor and the Transferee hereby mutually agree and declare that as from the date hereof the said entire rentcharge of £—— shall be and the same is hereby charged exclusively upon the land hereby transferred in exoneration of the residue of the land formerly subject thereto and retained by the Transferor [24]

[22] See p. 225, *ante.*

[23] The plan must be signed by the transferor and by (or on behalf of) the transferee.

[24] As the definition of "conveyance" in the Law of Property Act, 1925, s. 205 (1) (ii), embraces a Land Registry transfer, one of the effects of charging the rentcharge exclusively upon the land transferred is to confer on the transferor the remedies of distress and entry for perception in default of payment (*ibid.* s. 190 (1) (*a*) and (2)). Another effect ought to be that covenants to pay the entire sum are implied on

3. The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall be implied in this deed [25] and the Transferee charges the land hereby transferred with the payment of all sums which shall henceforth become payable in respect of the covenants on his part so implied

[4. *Certificate as to value if requisite*]

[*To be executed by both parties and attested*]

FORM 17

Deed regulating the Discounting of Hire Purchase and similar Agreements [1]

(*Drafted by J. R. Lingard*, LL.B., *Solicitor*)

THIS MASTER AGREEMENT is made the —— day of —— BETWEEN AB LIMITED whose registered office is situate at *etc.* (hereinafter called "the Finance Company") of the one part and CD LIMITED whose registered office is situate at *etc.* (hereinafter called "the Discount Company" which expression where the context so admits shall include the Discount Company its successors and assigns) of the other part

WHEREAS:

(a) The Finance Company has agreed to sell to the Discount Company such Agreements for Hire-Purchase Credit Sales Hire or other Agreements of a like nature now or hereafter entered into by the Finance Company or the benefit of which is from time to time otherwise vested in the Finance Company as the Discount

the part of the transferee (*ibid.* s. 77 (2); Sched. II, Pt. VIII, para. (i)). Nevertheless, owing to the apparent conflict between the provisions of rr. 77 and 109 of the Land Registration Rules, 1925, there is enough doubt to justify the inclusion of an express reference to the implied covenants. If this is done, successors in title of the transferor will be able to enjoy the benefit of both covenants and powers without express assignment (Law of Property Act, 1925, ss. 77 (5), 189 (2)).

[25] See the preceding note.

[1] This Master Agreement is designed to meet the needs of Discount Companies who acquire hire purchase agreements from other Finance Companies. It should be under seal and stamped 10s.

Company shall at any time elect to purchase (hereinafter referred to as "Nominated Agreements") together with the chattels comprised therein [2] at a price equal to the aggregate of the instalments payable or to become payable thereunder less —— per cent. or such other percentage as may from time to time be agreed in writing

(b) This Agreement shall apply to and have full force and effect in respect of each and every purchase of such Nominated Agreements and the chattels comprised therein

NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the premises the Finance Company hereby agrees to execute on demand a Deed of Assignment in the form set out in the First Schedule hereto assigning to the Discount Company such Nominated Agreements as the Discount Company may direct and all monies now or hereafter payable thereunder and the Finance Company's rights and interests in the chattels comprised therein [3] together with the benefit of all guarantees and other securities of whatsoever nature for the due performance or indemnity against loss from or otherwise in respect of such Nominated Agreements and all rights and

[2] Although the Finance Company purports to sell its rights and interests in chattels comprised in hire purchase agreements, any contractual licence to re-enter the hirer's premises and seize chattels is regarded as purely personal to the Finance Company and not capable of assignment (*Re Davis* (1889) 22 Q.B.D. 193) unless the hire purchase agreement was expressed to be made with the Finance Company "its successors and assigns." The right to retake chattels is also subject to the Hire Purchase Acts, 1938–1954.

[3] Even on the execution of the Deed of Assignment of the chattels, the Bills of Sale Acts, 1878–1882, probably do not apply since the chattels are in the possession of the hirers. The Finance Company has merely a chose in action, that is a mere right of action to recover the chattels on breach of the hire purchase agreement. Even if a dictum to the contrary in *Re Isaacson* (1895) 1 Q.B.D. 333 is correct, Lord Esher M.R. said at page 337: ". . . the Bills of Sale Acts would not operate to make the deed void *in toto* but would only affect its validity as regards the personal chattels." Clause 12 of the Master Agreement and clause 2 of the Deed of Assignment expressly state that the Assignment of the chattels is severable from the remainder of the Master Agreement so as to take advantage of this *obiter*.

remedies whatsoever for enforcing the said Agreements guarantees and securities including the rights to demand performance thereof and to sue for and enforce the same in the name of the Finance Company and forthwith upon the execution of the said Deed of Assignment to pay to the Discount Company the amount of any stamp duty thereon together with other costs charges and expenses

2. For the purpose of enabling the Discount Company to exercise more readily the rights herein conferred on it the Finance Company hereby irrevocably appoints the Discount Company its successors assigns and substitutes and each of them to be its Attorney for it and in its name and on its behalf and as its act and deed or otherwise to sign seal and deliver and otherwise perfect any such Deed of Assignment as aforesaid and all such deeds assurances acts and things as may be expedient for the full exercise of all or any of the rights conferred upon the Discount Company herein and to demand sue for recover receive and give effectual discharges for all monies now or hereafter payable under any Nominated Agreement and to enforce by legal proceedings or other lawful act or procedure the duties and obligations imposed upon the parties thereto and to give and receive all such notices and execute and register all such Bills of Sale as the Nominated Agreements and the acts and omissions of the parties thereunder may render necessary subject nevertheless to the provisions of the Hire Purchase Acts 1938 to 1954 so far as the same are applicable and generally to perform all acts and things necessary to vest in the Discount Company the complete ownership legal and equitable of the Nominated Agreements and chattels comprised therein and the Finance Company hereby ratifies and confirms and agrees to ratify and confirm whatever the Discount Company its successors assigns and substitutes may so execute or do

3. The Discount Company shall be at liberty to give notice of its election to purchase any Nominated Agreements to the Hirers Hire-Purchasers Purchasers or others who now or hereafter enter into any Nominated Agreements or ancillary guarantees or securities (all of whom are hereinafter called "the

Customer ") and to their successors and assigns in the form set out in the Second Schedule hereto [4]

4. Until the Discount Company shall otherwise direct the Finance Company shall collect at its own expense all monies now or hereafter payable to the Discount Company whether as initial payments subsequent instalments or otherwise in respect of any Nominated Agreements and upon receipt by the Finance Company of such monies the same shall be impressed with a trust in favour of the Discount Company All monies received by the Finance Company on behalf of the Discount Company shall be paid into a separate Bank Account and held and kept distinct and separate from the Finance Company's own monies [5] and shall be paid over to the Discount Company once in every fourteen days The Finance Company shall render to the Discount Company at the same time a full and detailed account showing the names of the customers concerned and the amount which each customer has paid together with particulars of any arrears

5. The submission by the Finance Company to the Discount Company of any Hire Purchase Credit Sale Hire or other transaction shall be in writing in the form set out in the Third Schedule hereto and shall be accompanied by the relevant Agreement duly completed and signed by the customer together with all guarantees and other securities of whatsoever nature for

[4] If the Finance Company is not incorporated with limited liability, notice in the form set out in the Second Schedule should always be given to hirers to prevent monies accruing due under their hire purchase agreements being in the reputed ownership of the Finance Company within the meaning of section 38 of the Bankruptcy Act, 1914. In other cases, the notice will prevent hirers obtaining rights of set-off against the Finance Company and will render the assignment of the Agreements a "Legal Assignment" within the meaning of section 136 of the Law of Property Act, 1925, thus defeating subsequent assignees. However, it is not the practice to serve notice on hirers owing to the adverse effect on the goodwill of the Finance Company, unless the reputed ownership provisions apply.

[5] The Trust impressed by clause 4 on monies received by the Finance Company is not in itself adequate protection for the Discount Company. It is essential to ensure that the monies are in fact paid into a separate bank account as trust money cannot be followed into an account which is overdrawn even under the Rule in *Re Hallett's Estate* (1880) 13 Ch. 696. Clause 9 of the Master Agreement authorises the Discount Company to inspect and take copies of the relevant accounts.

the due performance or indemnity against loss from or otherwise in respect of the said transaction and shall constitute

(a) an offer to sell to the Discount Company the full benefit of such Agreement and the Finance Company's rights and interests in the chattels comprised therein together with the benefit of all guarantees and other securities and all ancillary rights and remedies whatsoever in respect thereof or incidental thereto at a price equal to the aggregate of the instalments payable or to become payable thereunder less —— per cent. or such other percentage as may from time to time be agreed in writing

(b) The following representations and warranties on the part of the Finance Company namely:—

(i) That all initial payments expressed to be payable by the customer on the signature of such Agreement shall have been received by the Finance Company either in cash or by a lawful and proper allowance by way of part exchange prior to the submission of the Agreement

(ii) That any statutory enactments or statutory instruments which may from time to time affect such Agreements shall have been complied with

(iii) That the chattels comprised in such Agreement are the absolute and unincumbered property of the Finance Company free from any lien incumbrance or charge whatsoever save the rights of the Customer under the Agreement

(iv) That the said chattels are in all respects correctly described in the Agreement and are in proper working order repair and condition

On the acceptance by the Discount Company of any such offer the property in the chattels comprised in the Nominated Agreement shall pass to the Discount Company subject to the rights of the Customer thereunder and pending the execution of the Deed of Assignment referred to in Clause 1 hereof the Finance Company hereby agrees to hold the full benefit of such Nominated Agreement and all monies now or hereafter payable thereunder together with the benefit of all guarantees and other

securities of whatsoever nature for the due performance or indemnity against loss from or otherwise in respect of such Nominated Agreement and all ancillary rights and remedies whatsoever in respect thereof or incidental thereto in trust for the Discount Company

6. The Discount Company will not in any circumstances be responsible for any condition or warranty expressed or implied as to the quality description fitness or otherwise of the chattels comprised in any Nominated Agreement and is not to be under any obligation to maintain or repair such chattels and the Finance Company hereby undertakes to indemnify the Discount Company against all claims damages costs and expenses whatsoever made or incurred in respect of any Nominated Agreement or the chattels comprised therein

7. The Finance Company hereby agrees to hold the Discount Company indemnified from and against the non-payment of any monies now or hereafter payable in respect of any Nominated Agreement or the non-performance by a Customer of any of the terms and conditions therein contained and against all costs charges and expenses including the costs of any court proceedings at any time incurred or payable by the Discount Company in applying for any such payment or in repossessing or attempting to repossess the chattels comprised in any Nominated Agreement The Finance Company hereby further agrees but without prejudice to the foregoing that in the event of the determination of any Nominated Agreement from whatsoever cause before it has run its full course or in the event of a customer prematurely paying the whole of the unpaid balance of the Hire Purchase Price or Credit Sale Price thereunder the said unpaid balance shall forthwith be paid to the Discount Company

8. In the event of the Finance Company being wound up or in the event of a Receiver being appointed the Discount Company shall be entitled to retain any monies due to the Finance Company and to hold the same as security for the payment by the customers of all monies now or hereafter payable in respect of any Nominated Agreement A final account shall be struck as between the Discount Company and the Finance Company

and for this purpose all Nominated Agreements shall be treated as forming part of the same account and any balance found to be due from the Discount Company to the Finance Company shall only become payable when all such monies shall have been received by the Discount Company [6]

9. The Finance Company shall keep true and particular accounts in respect of all the Customers as hereinbefore defined and shall permit the Discount Company or its Agents at all reasonable times to inspect and take copies of or extracts from any books accounts receipts papers and documents relating to any Nominated Agreement including the separate Bank Account referred to in Clause 4 hereof

10. The Discount Company shall be at liberty without assigning any reason therefor to decline to accept either wholly or in part any transaction submitted by the Finance Company

11. In the event of the Finance Company recovering possession of the chattels comprised in any Nominated Agreement whether by reason of the determination of such Nominated Agreement by the Customer or otherwise the Finance Company hereby agrees to hold such chattels in trust for and on behalf of the Discount Company

12. It is hereby agreed and declared that all references in this Agreement to the chattels comprised in any Nominated Agreement shall be severable from the remainder of this Agreement.[7]

13. No relaxation or indulgence which the Discount Company may from time to time or at any time extend to the Finance Company or to the Customer or guarantor shall in any way prejudice or act as a waiver of the rights of the Discount Company hereunder and in particular but without prejudice to the foregoing shall not operate as a waiver of the rights to an indemnity under clauses 6 to 7 hereof

IN WITNESS, *etc.*

[6] Many Discount Companies require Finance Companies of uncertain standing to deposit a retention fund as security for the performance of their obligations under the Master Agreement. Clause 8 authorises the Discount Company to retain such monies and hold the same as security for the payment by hirers of monies accruing due.

[7] See note 3, *supra.*

THE FIRST SCHEDULE

THIS ASSIGNMENT is made the —— day of —— BETWEEN AB LIMITED whose registered office is situate at *etc.* (hereinafter called "the Finance Company") of the one part and CD LIMITED whose registered office is situate at *etc.* (hereinafter called "the Discount Company") of the other part

WHEREAS:

(a) Prior to the date hereof the Discount Company has purchased from the Finance Company the Hire Purchase and other Agreements set out in the Schedule hereto together with the chattels comprised therein on the terms of a Master Agreement dated the —— day of —— and made between the parties hereto

(b) It was a term of the said Master Agreement that the Finance Company would execute on demand a formal Deed of Assignment and the Discount Company has now required these presents

NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the premises the Finance Company as Beneficial Owner hereby assigns to the Discount Company ALL THAT the full benefit of and all contractual rights in the said Hire Purchase and other Agreements set out in the Schedule hereto and all monies now or hereafter payable thereunder and the Finance Company's rights and interests in the chattels comprised therein together with the benefit of all guarantees and other securities of whatsoever nature for the due performance of or indemnity against loss from or otherwise in respect of the same and all rights and remedies whatsoever for enforcing the said Agreements guarantees and securities including the right to demand performance thereof and to sue for and enforce the same in the name of the Finance Company TO HOLD the same unto the Discount Company absolutely provided always that this Assignment is subject to the provisions of the Hire Purchase Acts 1938 to 1954 so far as the same are applicable

2. It is hereby agreed and declared that the Assignment of the Finance Company's rights and interests in the chattels comprised in the said Hire Purchase and other Agreements shall be severable from the remainder of this Deed of Assignment and

that nothing herein contained shall in any way prejudice or affect the said Master Agreement dated the —— day of —— which shall remain in full force and effect and shall not merge in this Deed

3. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds three thousand five hundred pounds (£3500) [8]

IN WITNESS, *etc.*

THE SCHEDULE above referred to

Date	Number of Agreement	Customer	Nature of Chattels

THE SECOND SCHEDULE

To: XYZ

of *etc.*

and to all others whom this may concern

WE CD LIMITED whose registered office is situate at *etc.* HEREBY GIVE YOU NOTICE that on the —— day of —— we purchased from AB LIMITED whose registered office is situate at *etc.* (hereinafter called "the Finance Company") the full benefit of and all contractual rights in the Hire Purchase Agreement dated the —— day of —— and made between the Finance Company of the one part and yourself of the other part and all monies now or hereafter payable thereunder and the Finance Company's rights and interests in the chattels comprised therein together with the benefit of all guarantees and other securities of whatsoever nature for the due performance of or indemnity against loss from or otherwise in respect of the same and all rights and remedies whatsoever for enforcing the said Hire Purchase Agreement guarantees and securities including the right to demand performance thereof and to sue for and enforce the same in the name of the Finance Company Until we otherwise direct all monies now or hereafter payable under the said Hire Purchase Agreement whether as initial payments

[8] If such a Certificate of Value is appropriate.

subsequent instalments or otherwise shall continue to be payable to the Finance Company as trustees for ourselves

DATED this —— day of ——

For and on behalf of CD LIMITED

I hereby acknowledge that I have received a Notice of which the above is a true copy this —— day of ——

THE THIRD SCHEDULE [9]

To: The Board of Directors

CD LIMITED

WE AB LIMITED whose registered office is situate at *etc.* hereby offer to sell to you CD LIMITED the full benefit of the Hire Purchase and other Agreements set out in the Schedule hereto on the terms of the Master Agreement made between us and dated the —— day of ——

THE SCHEDULE above referred to

Date	Number of Agreement	Customer	Nature of Chattels

DATED this —— day of ——

For and on behalf of A B LIMITED

[9] An offer to sell in the form set out in the Third Schedule is especially important in cases where the Finance Company is not incorporated with limited liability. Its purpose is to ensure that transactions come within the exception for "debts growing due under specified contracts" contained in section 43 of the Bankruptcy Act, 1914.

FORM 18

Forms of clauses making Provision of a residence for Testator's Wife and for Continuance of a Service Tenancy

(*Drafted by Sir Lancelot Elphinstone, Barrister-at-Law*)

1. *Devise of testator's house*

(1) I devise my dwelling-house known as —— and the land occupied therewith to my trustees upon trust to permit my said wife to occupy the same during her life [1] and after her death upon trust to dispose of the same as part of my residuary estate and so that during her life my said wife shall be bound [2] to keep all buildings thereon in good repair and insured against fire and such other risks and for such amount as my trustees may from time to time direct and to pay all rates taxes and outgoings payable in respect of the said dwelling-house [Provided that my said wife shall be entitled to be paid all expense incurred by her in complying with the foregoing provisions out of the income or if the income shall be insufficient out of the capital of my residuary estate But my trustees may if they think fit at any time appropriate such part of my residuary estate as they consider will be sufficient with the income thereof to meet the said expense and thereupon the rest of my residuary estate shall be discharged from all liability in respect of the said expense]

Provided [also] that my trustees shall not be liable for failure to enforce the foregoing obligations of my said wife

(2) My trustees shall when required so to do convey the said dwelling-house to my said wife by a vesting instrument

[1] The wife having the right to occupy the house during her life will be tenant for life in possession under the Settled Land Act, 1925, s. 19 (1): *Re Acklom* [1929] 1 Ch. 195 and *Re Patten* [1929] 2 Ch. 276, 281. And a gift over in case she should cease to reside in the house will be void if before ceasing to reside she leases or sells the house. She would then become tenant for life of the rent or proceeds of sale: Settled Land Act, 1925, s. 106, and *Re Haynes* (1887) 37 Ch.D. 306. But if before the lease or sale she voluntarily ceases to reside in the house, the gift over will take effect: *Re Trenchard* [1902] 1 Ch. 378.

[2] If the house is leasehold, say "to pay the rent and all rates taxes and outgoings payable under and to perform and observe the covenants contained in the lease thereof."

my will being referred to as the trust instrument and my trustees being stated to be the trustees for the purposes of the Settled Land Act 1925

2. *Direction to purchase a dwelling-house*

(1) My trustees shall at the request of my said wife purchase a suitable dwelling-house with or without other land and either freehold or leasehold for her residence at a price not exceeding £—— including the costs of effecting the purchase and of doing any repairs or alterations necessary to render the house suitable for her occupation

(2) My said wife shall be entitled to occupy the house so purchased during her life and after her death the same shall become part of my residuary estate and be disposed of accordingly

(3) My said wife shall be bound [*continue as in clause (1) of Form 1*]

(4) The property so purchased shall be conveyed to my said wife by a principal vesting deed in accordance with the provisions of the Settled Land Act 1925 my will being referred to as the trust instrument and my trustees being stated to be the trustees for the purposes of the Settled Land Act 1925

3. *Provision for preventing the wife from acquiring the Settled Land Act powers*

(1) I devise my dwelling-house known as —— and the land occupied therewith to my trustees [*or as in clause (1) of Form 2*]

(2) The property so devised shall be held by my trustees [*or* the property so purchased shall be conveyed to my trustees] upon trust to sell the same with power to postpone the sale and so that during the continuance of the lease hereinafter mentioned no sale shall be made without the consent of my said wife and the net proceeds of such sale shall be held upon the trusts and with the powers (including power to purchase another such house) which would be applicable to the said sum if the said purchase had not been made

(3) My trustees shall grant a lease [3] of the said property to my said wife for the term of ninety years at the yearly rent of one pound payable in advance on the date of the commencement of each year of the said term and subject to the conditions that my said wife shall keep all buildings thereon in good repair and insured against fire and such other risks and for such amount as my trustees may from time to time direct and shall pay all rates taxes and outgoings payable in respect of the premises and that the said property or any part thereof shall not be used otherwise than as a single private dwelling-house and that the said term of years shall not be assigned and that my said wife shall not without the consent of my trustees underlet or part with the possession of the said property or any part thereof except for a period or periods not exceeding three months in all in any year and in the event of breach of any of the said conditions my trustees may at any time thereafter enter on the said property whereupon the said lease shall determine Provided that my trustees shall not be liable for failure to enforce or to take any action consequent on any breach of the said conditions [Provided also that my said wife shall be entitled to be paid all expense incurred by her in complying with the foregoing conditions out of the income *continue as in clause (1) of Form 1*] Provided also that my said wife or her legal personal representatives may determine the said lease at any time by giving one calendar month's notice in writing to my trustees and my trustees may determine the said lease at any time after the death of my said wife by giving one calendar month's notice in writing

[3] The wife being lessee at a rent will not be tenant for life under the Settled Land Act. See s. 20 (1) (iv) and *Re Catling* [1931] 2 Ch. 359. Sometimes a house is directed to be conveyed to the trustees on trust for sale, apparently in the belief that the tenant for life will have the right to occupy the house under the usual trust for payment of the net rents and profits until sale. But it seems that the question whether the tenant for life should be let into possession is for the trustees to decide in their discretion. See *Re Bagot's Settlement* [1894] 1 Ch. 177; *Re Newen* [1894] 2 Ch. 297 and *Re Hunt* [1900] W.N. 65. On the other hand, if the tenant for life is given an absolute right to occupy the house, it is doubtful whether she would not become tenant for life under the Settled Land Act, the right to reside being inconsistent with an immediate binding trust for sale. See Law of Property Act, 1925, s. 205 (1) (xxix) and *Re Hanson* [1928] 1 Ch. 96. It is, therefore, safer to grant a lease.

to the person entitled to the said lease or if no such person is in existence by affixing the same to the premises And the said lease shall be in such form and shall contain such covenants for giving effect to the said conditions as they shall think fit

4. *Continuance of a service tenancy after the Testator's death*

I hereby declare that if A of —— shall be in occupation of my cottage known as —— as my tenant at the date of my death then whether he shall then be in my service or not his tenancy shall not (except as hereinafter mentioned) be determined so long as he shall perform and observe the terms of the tenancy until the end of one month after his death and any sale of the said cottage before the death of the said A shall be made subject to the said tenancy and the foregoing provision [Provided that if my trustees shall decide to sell the said cottage and consider that on a sale subject to the said tenancy the price would be likely to be reduced by the amount of £ or any greater amount then my trustees may give notice to determine the tenancy (of the length required by the terms of the tenancy) so as to enable vacant possession to be given to the purchaser on completion and the said A on relinquishing possession in accordance with the notice shall be paid the sum of £ out of my residuary estate as compensation]

FORM 19

Mutual grant of rights of way over land between two houses to permit adjoining lessees to drive motor-vehicles over such land to garages at rear

(Supplied by Messrs. T. A. Needham & Son and Messrs. George Davies & Co., Solicitors, of Manchester)

THIS DEED OF GRANT made the —— day of —— 19— BETWEEN (AB) of —— (hereinafter called "the First Owner") of the first part (CD) of —— (hereinafter called "the Second Owner") of the second part and the (EF) BUILDING SOCIETY being a Society incorporated under the Building Societies Act

1874 whose chief office is situate at —— in the County of —— (hereinafter called "the Society") of the third part

Whereas:

(1) The First Owner is the estate owner of the property (hereinafter called "the First Property") specified in the First Schedule hereto being the dwelling-house situate and numbered —— in the City of —— and delineated on the plan annexed hereto and therein edged —— subject as in the said First Schedule is more particularly mentioned

(2) The Second Owner is the estate owner of the property (hereinafter called "the Second Property") specified in the Second Schedule hereto being the dwelling-house situate and numbered —— aforesaid and delineated on the said plan and therein edged —— subject as in the said Second Schedule is more particularly mentioned

(3) The First Owner and the Second Owner have agreed to grant to each other such rights of way over the land lying between their respective dwelling-houses leading to the said —— Road (being the land coloured —— in the said plan) as are hereinafter contained

Now this deed witnesseth as follows:—

1. In pursuance of the said agreement and in consideration of the grant by the Second Owner hereinafter contained the First Owner As Beneficial Owner hereby grants unto the Second Owner

(1) Full right and liberty for the Second Owner and his successors in title the owners and occupiers for the time being of the Second Property and his and their respective servants and licensees (in common with the First Owner and all others having the like right) at all times hereafter by day or night on foot or with a motor-car or light motor-van only for the purpose of gaining access to and egress from the side entrance to the Second Property and the garage erected and maintained or to be erected and maintained upon the Second Property and for no other purpose whatsoever to pass and repass over and along such portion of the First Property as is coloured —— in the said plan to the said —— Road and vice versa

TO HOLD the said right and liberty unto the Second Owner for the residue now unexpired of the term of —— years from the —— day of —— 19— created by a Lease made the —— day of —— 19— between —— of the one part and —— of the other part upon the terms and conditions set out in the Third Schedule hereto

2. IN further pursuance of the said agreement and in consideration of the grant by the First Owner hereinbefore contained the Second Owner As Beneficial Owner with the consent and approbation of the Society (testified by its being a party hereto) hereby grants unto the First Owner

(1) Full right and liberty for the First Owner and her successors in title for the owners and occupiers for the time being of the First Property and her or their respective servants and licensees (in common with the Second Owner and all others having the like right) at all times hereafter by day or night on foot or with a motor-car or light motor-van only for the purpose of gaining access to and egress from the side entrance to the First Property and the garage erected and maintained or to be erected and maintained upon the First Property and for no other purpose whatsoever to pass and repass over and along such portion of the Second Property as is within the area coloured —— in the said plan to the said —— Road and vice versa

TO HOLD the said right and liberty unto the First Owner for the residue now unexpired of the term of —— years from the —— day of —— 19— created by a Lease made the —— day of —— 19— between —— of the one part and —— of the other part upon the terms and conditions set out in the Third Schedule hereto

3. THE First Owner hereby acknowledges the right of the Second Owner to production and delivery of copies of the documents specified in the Fourth Schedule hereto and hereby undertakes the safe custody thereof

4. THE Society hereby acknowledges the right of the First Owner to production and delivery of copies of the documents specified in the Fifth Schedule hereto

5. THE Second Owner as to the documents specified in the Fifth Schedule hereto hereby covenants with the First Owner

that as and when any of the said documents shall come into the possession of the Second Owner or his successors in title he or they will when requested and at the cost of the First Owner or her successors in title execute a statutory acknowledgment for production and undertaking for the safe custody of such documents and that in the meantime and until the execution of such undertaking every person having for the time being possession of the said documents will keep them safe whole uncancelled and undefaced unless prevented from so doing by fire or other inevitable accident

IN WITNESS whereof the First Owner and the Second Owner have hereunto set their hands and seals and the Society has caused its Common Seal to be fixed hereunto the day and year first above written

THE FIRST SCHEDULE ABOVE REFERRED TO

ALL THAT plot of land situate in and fronting to —— Road in the City of —— containing in the whole —— square yards or thereabouts and more particularly delineated and described in the plan drawn on the above-mentioned Lease of the —— day of —— 19— and therein edged —— TOGETHER WITH the semi-detached dwelling-house erected thereon and numbered —— in —— Road

The said property is held for the unexpired residue of the term of —— years from the —— day of —— 19— created by the said Lease of the —— day of —— 19— SUBJECT to the payment of the yearly rent of £—— reserved by and to the performance and observance of the Lessee's covenants and the conditions contained in the said Lease

THE SECOND SCHEDULE ABOVE REFERRED TO

ALL THAT plot of land situate in and fronting to —— Road in the City of —— containing in the whole —— square yards or thereabouts and more particularly delineated and described in the plan drawn on the above-mentioned Lease of the —— day of —— 19— and therein edged —— TOGETHER WITH the semi-detached dwelling-house erected thereon and numbered —— in —— Road

The said property is held for the unexpired residue of the term of —— years from the —— day of —— 19— created by the said Lease of the —— day of —— 19— SUBJECT to the payment of the yearly rent of £—— reserved by and to the performance and observance of the Lessee's covenants and the conditions contained in the said Lease AND SUBJECT ALSO to a Mortgage made the —— day of —— 19— between the Second Owner of the one part and the Society of other part

THE THIRD SCHEDULE ABOVE REFERRED TO

(Here set out any special conditions [1])

THE FOURTH SCHEDULE ABOVE REFERRED TO

(Here specify the deeds retained by the First owner)

THE FIFTH SCHEDULE ABOVE REFERRED TO

(Here specify the deeds retained by The Society)

SIGNED SEALED AND DELIVERED by the above named —— in the presence of:— (L.S.)

SIGNED SEALED AND DELIVERED by the above named —— in the presence of:— (L.S.)

THE COMMON SEAL of the —— Building Society was affixed hereto in the presence of:— (L.S.)

Director

Secretary

[1] *e.g.*, in regard to the maintenance and repair the way and the sharing of the expense thereof.

RENTCHARGES IN REGISTERED CONVEYANCING

FORM 20

Transfer of Rentcharge [1]

(Drafted by Theodore B. F. Ruoff)

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....
Title no. .....
Property .....

[Date] In consideration of —— pounds (£—) the receipt of which is hereby acknowledged I [*registered proprietor*] of *etc.* [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* the rentcharge comprised in the title above referred to and all future payments thereof TOGETHER WITH the benefit of the covenant for payment thereof [AND TOGETHER with the benefit of all covenants conditions powers and remedies for the recovery and securing of the said rentcharge [2]] contained in the Transfer [*or* Conveyance] dated the —— day of —— referred to in the property register of the said title [3]

[*Certificate as to value, if requisite*]

[*To be executed by the transferor and attested*]

[1] A rentcharge is "land" (Land Registration Act, 1925, s. 3 (viii)) so that a registered rentcharge may be transferred by a simple transfer in form 19 in the Schedule to the Land Registration Rules, 1925. However, the benefit of a covenant to pay a rentcharge does not run with the rentcharge at law (*Milnes* v. *Branch* (1816) 5 M. & S. 411; *Grant* v. *Edmondson* [1930] 2 Ch. 245; affirmed [1931] 1 Ch. 1 (C.A.)), so that it is desirable to assign the benefit of this covenant expressly, even though the effect of registering a simple transfer is to confer on the transferee the legal estate "together with all rights, privileges and appurtenances belonging or appurtenant thereto" by virtue of section 20 (1) of the Land Registration Act, 1925.

[2] It also seems to be necessary to assign the benefit of any remedies conferred by the deed creating the rentcharge (other than the statutory remedies arising since January 1, 1882) unless by the terms of the grant they pass to each successive owner.

[3] *i.e.*, the deed creating the rentcharge: see the Land Registration Rules, 1925, r. 50.

FORM 21

Transfer of one or more of several rentcharges comprised in one title [4]

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....

Title no. .....

Property .....

[Date] In consideration of —— pounds (£—) the receipt of which is hereby acknowledged I [*registered proprietor*] of *etc.* [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* the rentcharge of £—— [charged upon [*short description of property*] [5]] [and the rentcharge of £—— charged upon [*property*]] being part of the land comprised in the title above referred to and all future payments of such rentcharge[s] TOGETHER WITH [6] the benefit of the covenants for payment thereof [AND TOGETHER with the benefit of all covenants conditions powers and remedies for the recovery and securing of the said rentcharge[s]] contained in the Transfer [*or* Conveyance] dated the —— day of —— [and the [Transfer] dated the —— day of ——] referred to in the property register of the said title [7]

[*Certificate as to value, if requisite*]

[*To be executed by the transferor and attested*]

[4] See p. 270, *ante*.

[5] If the registered rentcharges are of different amounts there is no need to identify them further by referring to the property out of which they issue.

[6] See notes 1 and 2, p. 730, *ante*.

[7] *i.e.*, the deeds creating the rentcharges.

FORM 22

Transfer of part of a rentcharge [8]

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....

Title no. .....

Property .....

[Date] In consideration of —— pounds (£—) the receipt of which is hereby acknowledged I [*registered proprietor*] of *etc.* [as beneficial owner] hereby transfer to [*purchaser*] of *etc.* the perpetual yearly sum of —— pounds (£—) being part of the registered rentcharge of £—— comprised in the title above mentioned TOGETHER WITH the benefit of all covenants conditions powers and remedies for the recovery and securing thereof contained in the Transfer [*or* Conveyance] dated the —— day of —— referred to in the property register of the said title

[*Certificate as to value, if requisite*]

[*To be executed by the transferor and attested*]

[8] As to the inadvisability of selling part of a rentcharge, see p. 270, *ante*. The remedies for non-payment must not be apportioned to different parts of the land.

FORM 23

Rentcharge charged on another rentcharge [9]

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....

Title no. .....

Property [*A rentcharge of £—— issuing out of 20 to 80 (even nos.) Oldpool Street*]

[Date] In consideration of —— pounds (£—) [10] I [*registered proprietor of rentcharge*] of *etc.* hereby:

1. Grant to [*new rentowner*] of *etc.* a perpetual yearly rentcharge of —— pounds (£—) to accrue from day to day but to be paid free from all deductions except property tax by equal [quarterly] payments on [the usual quarter days] in every year the first payment to be made on the —— day of —— and to be issuing out of the property hereinafter charged TOGETHER with the powers and remedies for securing and compelling payment of the said rentcharge conferred by section 122 of the Law of Property Act 1925

2. Charge the rentcharge comprised in the title above referred to with the payment of the rentcharge hereby created

3. Covenant with the said [*new rentowner*] to pay the rentcharge hereby created at the times and in manner aforesaid

[*To be executed by the registered proprietor and attested*]

[9] See the Law of Property Act, 1925, s. 122, and p. 272, *ante*.

[10] If the consideration is not a monetary one, other suitable and succinct wording should be employed as, for example: "For the purpose of indemnifying AB against non-payment of [the annual sum of £—— being an informally apportioned part of] a yearly rentcharge of £—— charged upon [*short description of land*] and created by a [Deed] dated. . . ." In such a case there would also need to be a provision that the rentcharge should not become payable until default occurred.

FORM 24

Will of small businessman providing for wife and then for relative and employees in the business [1]

(Drafted by J. E. Adams, LL.B., *Solicitor)*

1. I AB of —— MAKE THIS WILL this —— day of —— 19— and REVOKE all earlier Wills

2. IF my Wife CB be proved to have survived me by 30 days THEN I GIVE all my Estate to her and I APPOINT her my sole Executor

3. IF my wife be not proved so to have survived me THEN :—

(a) [*Appointment of Bank Executor in the Bank's approved form*] [2]

(b) THE Bank shall divide the assets of my estate into two categories namely :—

(i) ASSETS connected with any business owned by me either solely or in partnership with any other person or by any Company of or in which I shall be at the date of my death a Director or other Officer or a Shareholder (any such business being hereinafter termed " the Qualifying Business " and such assets being hereinafter collectively termed " the Business Assets ") and

(ii) ALL other assets (such assets being hereinafter collectively termed " the Private Assets ")

THE Bank's decision as to such division shall be final

(c) THE Bank shall hold the Business Assets IN TRUST :—

(i) To pay and discharge thereout all debts and liabilities attributable to the Qualifying Business and properly

[1] This will is designed for a married couple, middle-aged and without children, wishing to provide, after the death of the survivor, for an elderly relative and then for three long-service employees of the business carried on in partnership by the spouses. The circumstances of the spouses are such that an absolute gift to the survivor of them is desired, rather than a limited life interest (even with power in trustees to pay over capital), despite estate duty drawbacks.

[2] The bank nominated is the testator's bank, which has granted an overdraft in connection with the business, secured by a charge on the freehold residence, the most substantial private asset.

payable by my estate and also such proportion of the Estate Duty payable on my estate and of my funeral and testamentary expenses as the net probate value of the Business Assets shall bear to the total net probate value of my Estate THE Bank's decision as to which debts and liabilities shall be attributable to the Qualifying Business (subect to the provisions of the next following sentence) as to what constitute funeral and testamentary expenses and as to the correct proportions thereof to be paid under this sub-clause shall be final THE Bank shall however treat any overdraft or liability with or to any Bank acting at the date of my death as Bankers to the Qualifying Business as attributable wholly to the Qualifying Business whether or not the same shall have been secured by any personal guarantee of mine or by any charge or mortgage on any of the Private Assets and

(ii) To divide the balance equally between such of PQ RS and TU as shall at the date of my death be employed in or by the Qualifying Business

(d) THE Bank shall hold the Private Assets IN TRUST:—

(i) To pay thereout such debts and liabilities and such proportion of the Estate Duty payable on my Estate and of my funeral and testamentary expenses as shall not be discharged under paragraph (i) of sub-clause (c) and subject to such payments

(ii) for XY for her life with power for the Bank at its discretion to make such payments from capital as in any period of one year (calculated from the date of my death and the anniversaries thereof) in which the income or capital receipts of the said XY from all sources shall not exceed £—— may raise her total receipts for that year to a figure not exceeding the said figure of £—— PROVIDED that such power shall cease if and when the exercise of it shall have reduced the value of the Private Assets remaining after payments under paragraph (i) of this sub-clause to one-half of the value of the Private Assets so

remaining ascertained at the date of the last payment under paragraph (i) or one year from my death (whichever is earlier) and

(iii) AFTER the death of the said XY to divide the balance equally between such of PQ, RS and TU as shall at at the date of my death be employed in or by the Qualifying Business [3]

SIGNED by AB in our joint presence
and then signed by us in his presence

[3] Provision for wider powers of investment may be added if desired (in a separate paragraph).

FORM 25

Deed of partition of Shares [1]

THIS DEED OF PARTITION is made the —— day of —— 19— BETWEEN AB of etc. (hereinafter called "Mr. AB") of the one part and his wife CAB of the same address (hereinafter called "Mrs. AB") of the other part

WHEREAS:

(1) Mr. AB and Mrs. AB are the joint registered holders of and beneficially entitled as such joint holders to the securities and investments specified in Parts I and II of the Schedule hereto

(2) Mr. AB and Mrs. AB have agreed to make a partition between themselves of the said securities and investments in the manner hereinafter appearing

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. The securities and investments specified in Part I of the Schedule hereto (the respective values whereof at the middle price ruling on the date hereof are therein set against the same) shall be and subject to the execution of a formal transfer thereof into the sole name of Mr. AB are hereby partitioned and appropriated to and shall be taken by Mr. AB for his own use and benefit absolutely to the entire exclusion of Mrs. AB of any interest therein

2. The securities and investments specified in Part II of the Schedule hereto shall be and subject to the execution of a formal transfer thereof into the sole name of Mrs. AB are hereby partitioned and appropriated to and shall be taken by Mrs. AB for her own use and benefit absolutely to the entire exclusion of Mr. AB of any interest therein.

THE SCHEDULE ABOVE REFERRED TO

PART I

[*Here set out the investments to be taken by Mr. AB*]

PART II

[*Here set out the investments to be taken by Mrs. AB*]

[1] This deed will be followed by formal transfers of the shares in question.

FORM 26

Licence avoiding operation of Landlord and Tenant Act, 1954, Part II [1]

THIS LICENCE is made the —— day of —— 19— BETWEEN AB LIMITED whose registered office is at *etc.* (hereinafter called "the Licensors") of the one part and CD LIMITED whose registered office is at *etc.* (hereinafter called "the Licensees" which expression where the context so requires or admits shall include their assignees) of the other part

WHEREBY IT IS AGREED AND DECLARED as follows:—

1. Subject to the provisions hereinafter contained the Licensors hereby licence and permit the Licensees during the continuance of this Licence:—

(1) to enter upon and use ALL THOSE premises *etc.* (hereinafter called "the premises")

(2) for the purposes of access to and egress from the premises to use in common with others:

(a) the entrance halls passages and staircases leading to the premises

(b) the lifts in the building known as *etc.* (hereinafter called "the said building") for passengers only and not for goods between the hours of nine in the morning and six in the evening on weekdays (except Saturdays and Bank and General Holidays) and between the hours of nine in the morning and one in the afternoon on Saturdays

(3) to use in common with others the waterclosets lavatories and conveniences reserved for the joint use of the tenants and occupiers of the said building

2. Unless previously determined in accordance with the provisions hereinafter contained this Licence shall endure and

[1] This form is intended to deal only with the case where it is desired to grant a lease of premises and where it is desired to secure that the landlords will have the right to recover possession of a portion of the premises in the event of their wishing to resume occupation for alterations, etc. See further Vol. 21, pp. 723–724; Vol. 22, pp. 771–773.

continue for the shorter of the following three periods and no longer that is to say:—

(1) From the —— day of —— 19— until the —— day of —— 19— or

(2) From the —— day of —— 19— aforesaid until the expiry of a notice in writing served by the Licensors upon the Licensees in accordance with the provisions contained in the next following clause hereof

(3) From the —— day of —— 19— aforesaid until the determination from any cause whatsoever of a Lease (hereinafter called "the said Lease") of even date herewith and made between the same parties hereto of certain other premises forming part of the said building

3. (1) In the event of the Licensors requiring the unincumbered possession of the premises for the purposes of adapting the same for use as —— the Licensors may by notice in writing served upon the Licensees specifying a date not being less than the expiration of one calendar month from the date of service and stating that the premises are required by the Licensors for the purposes aforesaid determine this Licence and on the date so specified but without prejudice to the accrued rights (if any) of the parties respectively this Licence shall forthwith cease and determine

(2) For the purposes of this clause a certificate in writing signed by the Secretary and one Director for the time being of the Licensors that the premises are required for the purposes aforesaid shall (whether the said certificate shall be made before or after the service of the said notice) be taken for all the purposes hereof as conclusive evidence of the facts stated therein

4. There shall be excepted and reserved from and out of this Licence the following that is to say:—

(1) The outer walls of the premises and all gas water and other pipes electric mains electric and other wires fittings and appliances heating apparatus flues drains and watercourses as are now or shall hereafter be laid set up run in or constructed by the Licensors in through along over under or about the premises and

the free and uninterrupted use of the same by themselves and the tenants and occupiers of other parts of the said building

(2) The right of entry by themselves and their workmen and others at all reasonable times) making good any damage thereby done to the premises) for the purposes of (a) affixing inspecting repairing cleansing or altering any such pipes wires fittings and appliances heating apparatus flues drains and watercourses as aforesaid or of adding any others and (b) repairing maintaining cleaning or altering the said building or any property adjoining or for the purposes of executing any work which the Licensors may require to execute or which may be necessary in order to comply with the requirements of any local or other authority or the Licensor's superior landlords and (c) inspecting the condition of the premises and taking particulars of any alterations made by the Licensees and of any breaches of obligation on their part in relation to the premises and (d) the right of entry at all times to the premises for the purposes of obtaining access to the electrical installations therein situate belonging to the —— Electricity Board by the agents servants and workmen of the —— Electricity Board and the Licensors and the right for the —— Electricity Board or the Licensors to do all such works therein and thereon as it may deem expedient but nevertheless causing the Licensees as little damage and inconvenience as may be

5. During the continuance of this Licence the Licensees shall pay to the Licensors by equal quarterly payments in advance on the usual quarter days the several licence fees following that is to say:—

(1) a fee at the rate of £—— per annum in respect of the use of the premises hereby licensed

(2) a fee at the rate of £—— per annum towards the cost of providing hot water and heating for the premises

(3) a fee at the rate of £—— per annum towards the cost of maintenance of the said building

6. The Licensees shall not:—

(1) assign the benefit of this Licence either in whole or in part or hold the same as a trustee for any other person or persons

without the consent in writing of the Licensors and if requisite of the Licensors' superior landlord first had and obtained which consent shall not be unreasonably withheld in the case of a respectable and responsible assignee or other beneficiary who is for the time being or will become interested under the said Lease

(2) Use the premises of any part thereof or permit the same to be used for the purposes of any business including a trade profession or employment

PROVIDED that the Licensors shall upon the request of the Licensees from time to time by letter grant to the Licensees dispensation from the terms of this restriction for such a period not being less than three months at any one time as the Licensors may think fit and the Licensors shall renew such dispensation in the manner aforesaid until the Licensors shall in any such letter of renewal declare their intention to serve such a notice as that specified in clause 3 hereof and shall in fact serve such a notice within three months from the expiry of the period of dispensation covered by the last letter of renewal [2]

7. Save as herein expressly or impliedly varied the covenants on the part of the Licensors and Licensees respectively and the provisos and agreements contained in the said Lease shall be deemed to be incorporated in this Licence as express terms hereof so far as the same are applicable to the premises and are not inconsistent with such a licence as is hereby granted

8. If this Licence shall be determined by reason of the service and expiry of such a notice as is referred to in clause 3 hereof then in carrying out such building and other works on the premises as the Licensors may deem necessary or expedient for the purposes of adapting the same as —— the Licensors shall conduct all such building and other works in such a manner as to cause the least nuisance annoyance or disturbance to the Licensees as is reasonably possible and in particular such operations shall be conducted behind dust-proof screening and

[2] Even if, contrary to the expressed intention, the Licence were construed as creating a tenancy, the Licensors could rely upon this sub-clause as a second line of defence against the application of the 1954 Act: see further, Vol. 21, pp. 723–724.

outside the hours falling between —— in the morning to —— in the afternoon

9. It is hereby declared that in relation to the premises it is not the intention of either the Licensors or the Licensees to create between them the relationship of landlord and tenant or to confer such rights upon the Licensees as would amount in law to a tenancy of the premises or to create any estate or proprietary interest therein

10. This Licence shall be determinable at the option of the Licensors and (without prejudice to accrued rights) all the rights of the Licensees hereunder shall cease if at any time during the continuance hereof the Licensees shall:

(1) refuse or neglect to pay the said licence fees or any of them in full within twenty-one days of the same falling due (whether a demand therefor shall have been made or not) or

(2) fail or neglect to observe and perform any of the agreements on their part herein contained or incorporated

And in any such event the Licensors may (but without prejudice to accrued rights) serve upon the Licensees not less than twenty-one days' notice in writing determining this Licence and upon the expiration of the period specified in the said notice the Licensees shall forthwith vacate the premises and deliver up the same to the Licensors in accordance with the provisions hereof

AS WITNESS, *etc.*

FORM 27

Transfer of Upper Flat in Converted House together with part of the Garden and a Garage

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936

County .....
Parish or place .....
Vendor's title No. .....
Property .....
Title number allotted to .....
Property hereby transferred .....

THIS TRANSFER is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Vendor") of the one part and CD of *etc.* (hereinafter called "the Purchaser") of the other part

WHEREAS:

(1) The Vendor is registered at H.M. Land Registry as proprietor with an absolute title of the freehold property known as *etc.* being the property comprised in the title above referred to subject to the covenants and restrictions specified in the Charges Register of the said title

(2) The Vendor has recently caused the house situate on and forming part of the said property to be converted into two flats in accordance with the plan (together with the specification of work endorsed thereon) annexed hereto

(3) The Vendor has agreed with the Purchaser for the sale and transfer to the Purchaser of the flat and premises described in the First Schedule hereto (all of which flat and premises are hereinafter together called "the Upper Flat") for the consideration upon the terms and subject to the provisions hereinafter contained

(4) The flat and premises other than the Upper Flat forming the residue of the property comprised in the Vendor's Title above referred to are hereinafter called "the Lower Flat"

Now in pursuance of the said agreement and in consideration of the sum of £ —— paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) and of the covenants and provisions hereinafter contained THIS DEED WITNESSETH as follows:—

1. The Vendor as beneficial owner hereby transfers unto the Purchaser ALL THAT the Upper Flat TOGETHER WITH the easements rights and privileges set forth in the Second Schedule hereto subject as therein mentioned SUBJECT TO the restrictive covenants mentioned in the Charges Register of the Vendor's Title above referred to so far as the same affect the Upper Flat and are still subsisting and capable of taking effect EXCEPT AND RESERVING unto the Vendor AND SUBJECT TO as mentioned in the Third and Fourth Schedules hereto

2. The Purchaser with the intent to bind so far as may be the Upper Flat and all persons who shall for the time being be the owner of any estate of interest in or the occupier of the Upper Flat (but save as hereinafter provided not so as to be personally liable under this clause after the Purchaser shall have parted with all his estate and interest in the Upper Flat) hereby covenants with the Vendor for the benefit and protection of the Lower Flat and each and every part thereof that the Purchaser will from time to time and at all times hereafter:—

(1) Put keep and maintain the Upper Flat and every part thereof in good and tenantable repair order and condition as respects structure decoration and tidiness and (in the case of garden land) cultivation and without prejudice to the generality of the foregoing (a) keep and maintain in good condition and state of cleanliness all concrete and other paths which are now or may at any time hereafter be situate upon any part of the property comprised in the Upper Flat and (b) keep and maintain the exterior wood and ironwork properly painted in a paint or paints of such colour or colours as the Vendor and the Purchaser or other the registered proprietors for the time being respectively of the freehold of the Lower Flat and the Upper Flat may jointly determine and failing such determination in the like

colour or colours as those last before used or as near thereto as possible

(2) Insure and keep insured the Upper Flat against loss or damage by fire storm flood and tempest and other risks normal in a comprehensive householder's policy in the full value thereof with an Insurance Office of repute and whenever required produce to the Vendor the policy or policies of such insurance and the receipt for the last premium for the same and in the event of any moneys being received under or in respect of such insurance such moneys shall as soon as reasonably practicable be laid out in the repair rebuilding or re-instatement of the Upper Flat and in case such moneys shall be insufficient for such purpose the deficiency shall be made good by the Purchaser

(3) Permit the Vendor and his surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Upper Flat or any part thereof to view and examine the state and condition thereof for the purposes of the covenants and provisions herein contained

(4) Permit the Vendor and his surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Upper Flat or any part thereof for the purpose of repairing any part of the Lower Flat and for the purpose of making repairing inspecting cleansing renewing and testing all pipes drains wires conduits flues chimneys and chimney stacks serving the Lower Flat and for similar purposes so however that the works repairs inspections cleansings and alterations shall be carried out with all dispatch causing as little disturbance as possible and that the person or persons exercising the rights hereby conferred shall make good all damage done to the Upper Flat in carrying out the same and to all decorations fixtures and movable chattels therein

(5) Observe the restrictions set forth in the Fourth Schedule hereto

3. THE Purchaser hereby further covenants with the Vendor that if and when the Purchaser shall transfer or create any estate or interest in or part with the possession of the Upper Flat in favour of another person or other persons the Purchaser shall

procure such other person or persons to enter into a covenant for himself or themselves and his or their successors in title in the terms of the covenant contained in clause 2 hereof (together with the ancillary provisions contained in clause 6 (3) hereof) or as near thereto as the circumstances will admit or require and also a covenant in the terms of this covenant or as near thereto as the circumstances will admit or require which covenants shall be expressed to be for the benefit of and enforceable by the Vendor or other the registered proprietor for the time being of the freehold of the Lower Flat or any part thereof to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the registered proprietor for the time being of the freehold of the Lower Flat or any part thereof and it is hereby declared that unless and until the provisions of this clause shall be complied with the Purchaser shall be and remain personally liable to perform and observe the covenants on her part hereinbefore contained

4. The Vendor with the intent to bind so far as may be the Lower Flat and all persons who shall for the time being be the owner of any estate or interest in or the occupier of the Lower Flat (but not so as to be personally liable under this clause after he shall have parted with all his estate and interest in the same) hereby covenants with the Purchaser for the benefit and protection of the Upper Flat and each and every part thereof that the Vendor will from time to time and at all times hereafter observe and perform the covenants contained in clause 2 hereof as if the same were repeated in this clause and expressed to be entered into by the Vendor with the Purchaser and to be applicable to the Lower Flat *mutatis mutandis*

5. The Vendor hereby further covenants with the Purchaser that if and when the Vendor shall transfer or create any estate or interest in the Lower Flat in favour of another person or other persons the Vendor shall procure such other person or persons to enter into a covenant for himself or themselves and his or their successors in title so as to correspond with the covenant on the part of the Vendor contained in clause 4 hereof or as near thereto as the circumstances will admit or require and also a covenant to

correspond with this covenant or as near thereto as the circumstances will admit or require which covenants shall be expressed to be for the benefit of and enforceable by the Purchaser or other the registered proprietor for the time being of the freehold of the Upper Flat or any part thereof to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the registered proprietor for the time being of the freehold of the Upper Flat or any part thereof And it is hereby declared that unless and until the provisions of this covenant shall be complied with the Vendor shall be and remain personally liable to perform and observe the covenants on her part hereinbefore contained

6. It is hereby agreed and declared as follows: —

(1) If at any time during the period (hereinafter called "the Perpetuity Period") comprising the lives of the issue now living of His late Majesty King George the Fifth and the life of the survivor of them and the period of twenty-one years after the death of such survivor the Purchaser or (as the case may be) the Vendor after the expiration of twenty-one days' notice in writing served on him in that behalf and signed by the Vendor or (as the case may be) the Purchaser shall fail or persist in failing to observe or perform the covenants hereinbefore contained on the part of the Purchaser or (as the case may be) the Vendor to repair maintain and insure any property or such one or more of such covenants as shall be specified in the said notice then and in any such case and as often as the same shall happen and whether or not such failure or failures aforesaid shall constitute an actionable breach of covenant (or any breach of covenant) it shall be lawful for the person or persons so signing the said notice at any time during the Perpetuity Period:

(i) in the case of failure to repair or maintain any property with or without workmen or others but without prejudice to any other remedy right or power available to such person or persons in respect thereof to enter upon the Upper Flat or (as the case may be) the Lower Flat and execute such works acts or things (if any) thereon as shall be necessary or proper for repairing or maintaining the

same in accordance with the standard or repair or maintenance specified in the said covenant and

(ii) in the case of failure to insure any property to insure the Upper Flat or (as the case may be) the Lower Flat for its full value And all costs and expenses incurred in the exercise of any of the foregoing powers shall be a debt owed by the person so failing as aforesaid to the person or persons so serving the said notice

(2) Where during the Perpetuity Period any sum or sums shall become payable by the Purchaser to the Vendor or by the Vendor to the Purchaser under the foregoing provisions of this clause or under any other provision of this DEED the said sum or sums together with interest thereon at the rate of £7. 0s. 0d. per centum per annum from the date or respective dates on which the same shall have become payable shall if unpaid after twenty-one days of a demand therefor made during the Perpetuity Period be a charge upon the Upper Flat or (as the case may be) the Lower Flat of the person or persons in default and enforceable accordingly

(3) The expressions "the Vendor" and "the Purchaser" shall where the context so admits and without prejudice to the operation of sections 78 and 79 of the Law of Property Act 1925 include their respective successors in title and the persons claiming through or under them and where the Purchaser or the Vendor for the time being consists of two or more persons all the covenants by and with the Purchaser or the Vendor shall be deemed to be by and with such persons jointly and severally

7. The Vendor and the Purchaser hereby apply to the Registrar to enter on the Register affecting the titles of the Vendor and Purchaser respectively

(1) such notes or (as the case may require) notices of the easements rights privileges exceptions reservations covenants restrictions provisions and rights of entry hereby created granted excepted reserved and imposed as are capable of registration

(2) a restriction in the following form: "Except under an order of the Court or the Registrar no transfer or lease shall be registered unless such transfer or lease contains a provision in the

following form: ' It is hereby certified that the provisions hereof comply with and give effect to all the covenants and provisions contained in a transfer dated the —— day of —— 19— and made between AB of *etc.* of the one part and CD of *etc.* of the other part ' ''

8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £——

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

The Upper Flat

ALL THOSE the following premises that is to say:—

(1) The flat or suite of rooms numbered or to be numbered and being on the first floor of the building situate at *etc.* (hereinafter called " the building ") as the same is shown on the plan annexed hereto Together with so much of the building with the roof eaves or overhand chimney stacks chimneys and flues and guttering and drainpipes forming part thereof or attached thereto (severed horizontally) as lies above the level of the underside of the floor joists of the said flat or suite of rooms

(2) The land forming the approach and part of the stairway giving access to the said flat or suite of rooms and coloured —— on the said plan

(3) The staircase giving access to the said flat or suite of rooms coloured —— on the said plan and so much of the walls or other part of the building enclosing the same as at any particular point or points lie above the underside of such staircase but excluding the material forming the underside surface thereof and all such parts of the building and land as lie below the topside of such material

(4) The piece or pieces of garden or open land lying to the —— and —— of the building as the same together with measurements are shown coloured —— and —— hatched —— respectively on the said plan

(5) The piece of land lying to the south of the building together with the semi-detached garage erected thereon as the same together with measurements is shown coloured —— (the internal wall separating the said garage from the adjoining garage being a party wall severed medially)

THE SECOND SCHEDULE ABOVE REFERRED TO

Easements Rights and Privileges Included in the Transfer

1. Such easements and benefits of or in the nature of support and protection from the elements for the Upper Flat or any part thereof as are now enjoyed by the same or as are necessary to ensure for the Purchaser the right to enjoy such facilities and benefits of or in the nature of support and protection from the elements for the Upper Flat or any part thereof as have hitherto been enjoyed or capable of being enjoyed over or in respect of the Lower Flat or any part thereof by reason of the Upper Flat and the Lower Flat having been in common ownership

2. The right of free and uninterrupted passage and running of gas electricity water soil smoke and fumes to and from the Upper Flat or any part thereof through or from the pipes tanks wires drains conduits flues and chimneys which are now or may at any time hereafter be in under or passing through the Lower Flat or any part thereof so far as may be reasonably necessary for the comfortable occupation of the Upper Flat

3. The right at all reasonable times and from time to time and with or without workmen and others upon notice (except in case of emergency) to enter upon any part of the Lower Flat for the purpose of maintaining or decorating the Upper Flat or of inspecting cleansing repairing renewing and installing so far as may be necessary any such pipes tanks wires drains conduits flues and chimneys as aforesaid causing as little disturbance as possible and making good all damage caused

4. The right for the Purchaser and all persons authorised by her at all times to pass and repass on foot over and along the paths shown coloured —— and hatched —— on the plan annexed hereto for purposes incidental to the occupation of the Upper Flat but not (*per se*) for recreation or amusement

THE THIRD SCHEDULE ABOVE REFERRED TO

Exceptions and Reservations

1. Such easements and benefits of or in the nature of support and protection from the elements for the Lower Flat or any part thereof as are now enjoyed by the same or as are necessary to ensure for the Vendor the right to enjoy such facilities and benefits of or in the nature of support and protection from the elements for the Lower Flat or any part thereof as have hitherto been enjoyed or capable of being enjoyed over or in respect of the Upper Flat or any part thereof by reason of the Upper Flat and the Lower Flat having been in common ownership

2. The right of free and uninterrupted passage and running of gas electricity water soil smoke and fumes to and from the Lower Flat or any part thereof through or from the pipes tanks wires drains conduits flues and chimneys which are now or may at any time hereafter be in under or passing through the Upper Flat or any part thereof so far as may be reasonably necessary for the comfortable occupation of the Lower Flat

3. The right at all reasonable times and from time to time and with or without workmen and others upon notice (except in case of emergency) to enter upon any part of the Upper Flat for the purpose of maintaining or decorating the Lower Flat or of inspecting cleansing repairing renewing and installing so far as may be necessary any such pipes tanks wires drains conduits flues and chimneys as aforesaid causing as little disturbance as possible and making good all damage caused

4. The right for the Vendor and all persons authorised by her at all times to pass and repass on foot over and along the paths or land shown coloured —— and —— on the plan annexed hereto for purposes incidental to the occupation of the Lower Flat but not (*per se*) for recreation or amusement

THE FOURTH SCHEDULE ABOVE REFERRED TO

1. Not to use or occupy the Upper Flat nor permit the same to be used for any purpose whatsoever other than as a private residential flat in the occupation of one family only nor for any purpose from which a nuisance can arise to the owners lessees and

occupiers of the Lower Flat or in the neighbourhood nor for any illegal or immoral purpose

2. Not to build or erect or cause or permit to be built or erected any building or structure on any part of the land forming part of the Upper Flat which is now uncovered by any building or structure

3. Not to suffer or permit anything upon the Upper Flat which will or might lessen the support or protection from the elements thereby given to the Lower Flat

4. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns tanks or waste or soil pipes or out of the windows of the Upper Flat

5. Not to hang or expose washing or any clothes or materials on any part of the Upper Flat [except on weekdays on the land shown coloured —— on the plan annexed hereto] so as to be visible from outside the said flat

6. Not to do anything which may be or become a nuisance damage or annoyance or inconvenience to the owner or occupier of the Lower Flat or to the persons living in the neighbourhood and in particular not to permit any singing or instrumental music therein between the hours of 11 p.m. and 9 a.m. nor use or permit or suffer to be used a wireless set or apparatus so as to be audible outside the Upper Flat if the occupier of the Lower Flat shall object thereto nor place or keep any dustbin or other refuse container under or near or so as to be visible from inside the windows of the Lower Flat nor place or keep anywhere outside the building of the Upper Flat any tank or water butt.

7. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the Lower Flat or cause an increased premium to be payable in respect thereof.

8. Not to use the garage forming part of the Upper Flat for any purpose other than as a domestic garage for the garaging of one private motor-car.

RENTCHARGES IN REGISTERED CONVEYANCING

FORM 28

Application for cancellation of notice of an unregistered rentcharge [1]

(Drafted by Theodore B. F. Ruoff)

H.M. LAND REGISTRY

LAND REGISTRATION ACTS, 1925 and 1936

County or county borough.....
Title no. .....
Rentcharge of £—— issuing out of [*short description of property*] created by a [Conveyance] dated .....

We, ...

of .....

solicitors for [*registered proprietor of land*] (hereinafter called the applicant) hereby apply that the necessary entries and cancellations be made on the register to give effect to the determination of the rentcharge, particulars of which are set out above and we declare as follows:

1. The applicant is entitled to the said rentcharge and to the freehold land out of which it issues and desires the said rentcharge to be treated as determined.
2. We are not aware of any rentcharge created out of the said rentcharge or of any other incumbrance on the said rentcharge or of any question or doubt affecting the title thereto which would prevent determination.
3. The deeds and documents accompanying this application and mentioned in the accompanying list [2] in triplicate signed by us and dated the —— day of —— are all the deeds and documents relating to the title which the applicant has in his possession or under his control, including

[1] See p. 377, *ante*.
[2] The list of documents should be in triplicate.

opinions of counsel, abstracts [3] contracts and conditions of sale, requisitions, replies, official certificates of search in the Land Charges Department and other like documents in regard to the title.

4. The value of the said rentcharge now determined does not exceed £——.[4]

Date .....

Signature of applicant's solicitors .....

FORM 29

Transfer in consideration of an Improved Rentcharge of Part of the Land in a Title discharged from a Registered Charge and exonerated from a Prior Rentcharge [1]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[*date*] 1. In consideration of —— pounds (£——) paid to [*proprietor of registered land*] of, etc. (hereinafter called "the Transferor") the receipt whereof is hereby acknowledged and

[3] There should be an examined abstract proving the applicant's title to the rentcharge: see the Land Registration Rules, 1925, rr. 201, 202 and 307.

[4] Prima facie the value is twenty times the annual value (Land Registration Fee Order, 1930; Fee Order Rule 11 (*a*)).

[1] The writer is indebted to Mr. Robert Cooke, T.D., LL.B., of Manchester, for calling attention to the need for this and the five forms following, although he himself is solely responsible for the drafting of them and for any deficiences therein. This form and the next one are designed to cover the situation where a vendor, who holds subject to a rentcharge and a registered charge, sells a single house or plot for cash and also an improved rentcharge, and induces the proprietor of the charge to discharge the land transferred from the existing charge in consideration of his receiving a charge of the improved rentcharge by way of substituted security. This form is flavoured with ingredients from statutory forms 55 and 46 (Land Registration Rules, 1925, rr. 167 and 142). The transfer should be lodged with two certified copies under application form A.5. Fees: under scale 4 on the money passing and under scale 2 on the amount of the rentcharge for registering the

also in consideration of the perpetual yearly rentcharge of —— pounds (£——) hereinafter created I the Transferor [as beneficial owner] hereby transfer to [*purchaser*] of, etc. (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [2] known as —— being part of the land comprised in the title above referred to [TOGETHER with the easements and rights set out in the First Schedule hereto and EXCEPT and RESERVING the easements and rights set out in the Second Schedule hereto] exonerated as from the date hereof from the payment of the whole or any part of the rentcharge of £—— created by a [Conveyance] dated, *etc.* (hereinafter called "the overriding rentcharge") but subject to the observance and performance by the Transferee of the covenants therein contained other than those for payment of the entire rentcharge and the insurance and maintenance of the premises charged therewith so far as they relate to the land hereby transferred.

2. In consideration of the Transferor executing a deed of substituted security of even date herewith I [*proprietor of registered charge*] of, etc., hereby discharge the land transferred from the charge dated the —— of —— and registered on the —— of —— of which I am the proprietor and from all liability in respect thereof.

3. The Transferee hereby grants [3] to the Transferor a perpetual yearly rentcharge of —— pounds (£——) to commence from the date hereof and to accrue from day to day and to be paid free from all deductions (except income tax) by equal [half yearly] payments on the —— of —— and the —— of —— in every year the first payment to be made on the —— of —— next and to be for ever charged upon and issuing out of the land hereby transferred TOGETHER with the powers and remedies for securing and compelling payment of the said rentcharge conferred by section 121 of the Law of Property Act 1925.

[4. It shall be lawful for the Transferor or for the persons

transfer, plus a fee under scale 1 on 20 times the amount of the rentcharge for registering it (Land Registration Fee Order, 1930, abatement 7 and Fee Order Rule 11).

[2] The plan must be signed by the transferor and either by the transferee or by his solicitor on his behalf.

[3] See note 3, to Form 12, p. 699, *ante*.

from time to time deriving title under him to the said rentcharge hereby created to re-enter [4] into and upon the land hereby transferred or any part thereof in the name of the whole and to repossess and enjoy the same as if this transfer had never been made in any of the following events:

(a) If the said rentcharge or any part thereof shall at any time or times hereinafter be unpaid for [six calendar months] after any of the days appointed for payment thereof although no legal demand therefor shall have been made.

(b) If and so often as the Transferee or his successors in title shall fail to observe or perform any other of the covenants contained in [sub-clauses (b) (c) (e) and (f) of] clause 5 hereof notwithstanding any actual or constructive waiver of his or their default by the Transferor or his successors in title.]

5. The Transferee hereby covenants with the Transferor:—

(a) To pay the said yearly rentcharge hereby created in the manner and at the times hereinbefore appointed for payment thereof.

(b) At his own cost within [twelve] calendar months from the date hereof to erect and complete fit for habitation and to the satisfaction of the Transferor a substantial dwelling-house of brick or stone or both and covered in with good tiles with all proper outbuildings and conveniences of the annual letting value of at least £——.

(c) At all times after the erection of the said dwelling-house to keep it and its appurtenances and all sewers drains walls fences and outbuildings in good and substantial repair.

(d) To permit the Transferor his surveyor or other agent once at least in every year upon receipt of not less than [ten] days' previous written notice in that behalf to enter in the day-time into and upon the said dwelling-house and premises and to view the condition thereof and to make good within [two] calendar months after

[4] See note 4, p. 701, *ante*.

notice in writing all defects in repair then found and if the Transferee shall fail to repair the property in accordance with such notice to permit the Transferor with workmen and others to enter into and upon the land hereby transferred and execute and do such works as in the opinion of the Transferor are necessary and to remain in possession of the said premises and receipt of the rents and profits until thereby or otherwise all sums of money expended by the Transferor on such works together with all costs and expenses in connection therewith shall have been fully paid and satisfied.

(e) To insure and keep insured the said dwelling-house and premises against loss or damage by fire in an insurance office approved of in writing by the Transferor in the full value thereof being not less than the sum of £—— and to pay all premiums payable in that behalf within [seven] days after the same shall have become due and further at any reasonable time of the day at the request of the Transferor to produce to him or his agent the policy of insurance and the receipt for the current premium.

(f) In the case of damage by fire to rebuild and reinstate the said dwelling-house and outbuildings within [one year] of any such damage having occurred.

6. The Transferor and the Transferee hereby agree and declare that as from the date hereof the entirety of the overriding rentcharge shall be and the same is hereby charged exclusively upon the residue of the land formerly subject thereto and retained by the Transferor in exoneration of the land hereby transferred.

7. The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall be implied in this deed [5] and the Transferor charges the land remaining in the title above referred to with the payment of all sums which shall

[5] In view of the doubts about the effect of rr. 77 and 109 of the Land Registration Rules, 1925, (see p. 222 *ante*) an express reference to the covenants implied by the Law of Property Act, 1925, s. 77 (2) and Sched. II, Pt. VIII, para. (ii), should be inserted in the deed.

henceforth become payable in respect of the covenants on his part so implied.

8. If the Transferee shall at any time or times hereafter be called upon to pay and shall pay the overriding rentcharge or any part thereof or shall incur or sustain any losses costs charges damages or expenses by reason of the non-payment thereof or any part thereof then and in any such event it shall be lawful for the Transferee to retain the perpetual yearly rentcharge hereby created or any part thereof [6] and in case such last mentioned rentcharge shall be insufficient to reimburse the Transferee in respect of all such losses costs charges damages and expenses then and in every such case it shall be lawful for the Transferee to enter into and distrain upon the property subject to the overriding rentcharge and not hereby or previously transferred by the Transferor for the amount so paid sustained or incurred and the costs of and attending such distress and to sell and dispose of the distress so taken as landlords are authorised to do in case of a distress for non-payment of rent.

9. The Transferee to the intent and so as to bind the land hereby transferred into whosesoever hands the same may come and to benefit and protect the remainder of the land comprised in the title referred to and every part thereof [*or otherwise as the case may be*] and so that this covenant shall be enforceable by the Transferor and his successors in title or other the owner or owners for the time being of the said remaining land or any part thereof hereby covenants with the Transferor that the Transferee and his successors in title will at all times observe and perform the stipulations and restrictions set out in the [Third] Schedule hereto [PROVIDED ALWAYS that upon his ceasing to have any estate or interest in the land hereby transferred the Transferee shall thenceforth be absolved from any personal liability for any breach of the said stipulations that may thereafter be committed in relation to the land hereby transferred].

[10. *Certificate as to value, if requisite*]

[The First Schedule]

Easement and rights granted to the Transferee

[6] As to this power of retainer, see p. 224, *ante*.

[The Second Schedule]

Easements and rights excepted and reserved

The [Third] Schedule

Restrictive stipulations

[*To be executed by both parties and attested*]

FORM 30

Charge by way of Substituted Security of the Rentcharge created by the last Deed [7]

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....

Title No. [*leave blank*] [8]

Property [A perpetual yearly rentcharge of £—— described below]

[*date*] 1. In consideration of [*chargee*] of, etc. (hereinafter called "the Chargee") having joined in a transfer in favour of [*transferee*] of even date herewith [*or*, dated the —— of ——] of part of the land comprised in title number [*title no. of transferor's land*] being the land shown and edged with red on the plan attached to the said transfer known as —— in order to discharge the land transferred from a charge dated the —— of —— and registered on the —— of —— against the said title number [*title number of transferor's land*] (hereinafter called "the Principal Charge") I [*rentowner, being the transferor under the*

[7] See note 1 to the last form. The deed should be stamped as a substituted security and bear a denoting stamp. A certified copy of the charge must be lodged with the application for registration. The fee is assessed under paragraph VI: see abatement 4 in the Land Registration Fee Order, 1930. Presumably the chargee's solicitors will lodge the applications for registration both of the transfer of part creating the rentcharge and also of this present charge, in which case clear instructions should be given on application form A.5 as to whom the land certificate is to be issued and to whom the charge certificate in respect of the present charge.

[8] The title number allotted on the registration of the rentcharge will not be known to the applicant but will be entered by the Registry.

previous deed] of, *etc.* (hereinafter called "the Chargor") [as beneficial owner] hereby charge the perpetual yearly rentcharge of £—— created by the said transfer and charged upon and issuing out of the land thereby transferred with the payment to the Chargee on the —— of —— of the principal sum and interest covenanted to be paid in the Principal Charge.

2. For the consideration aforesaid the Chargor [as beneficial owner] assigns unto the Chargee the benefit of the covenant for payment of the said rentcharge and the benefit of all covenants conditions powers and remedies for the recovery and securing of the said rentcharge contained in the said transfer [TOGETHER with the benefit of the provisions for indemnity against an overriding rentcharge of £—— therein contained] TO HOLD unto the Chargee subject only to the following proviso namely PROVIDED ALWAYS that if the Chargor shall on the —— of —— next repay the principal sum with interest at the rate previously referred to the Chargee will at the request and cost of the Chargor reassign the premises assigned by this clause to the Chargor or as he may direct.

3. The Chargor hereby declares that except for the substitution of the property hereby charged for the land comprised in the above mentioned transfer the Principal Charge shall remain in full force and effect and shall henceforth be read and construed as if the property hereby charged and the property remaining subject to the security had been the property comprised therein.

[*To be executed by the chargor and attested*]

FORM 31

Transfer of Part discharged from a Registered Charge but subject to a Rentcharge which is Informally Apportioned [9]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[*date*] 1. In consideration of —— pounds (£——) paid to [*proprietor of registered charge*] of, etc., the receipt whereof is hereby acknowledged [and also in consideration of —— pounds (£——) paid to [*proprietor of registered land*] of, etc. (hereinafter called "the Transferor") the receipt whereof is hereby acknowledged] I [*proprietor of registered land*] of, etc. (hereinafter called "the Transferor") [*or*, I the Transferor] [as beneficial owner] hereby transfer to [*purchaser*] of, etc. (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [10] known as —— being part of the land comprised in the title above referred to subject to the payment of an annual sum of £—— being an apportioned part of the yearly rentcharge mentioned in clause 3 hereof.

2. I the said [*proprietor of registered charge*] hereby discharge the land transferred from the charge dated the —— of —— and registered on the —— of —— of which I am the proprietor and from all liability in respect thereof [and I admit that the same is discharged to the extent of —— pounds (£——)].[11]

3. The Transferor and the Transferee hereby mutually agree and declare that the perpetual yearly rentcharge of £—— created

[9] This form (which incorporates statutory form 55) is provided for the situation where (in contrast with that covered by form 29, p. 754, *ante*) the registered chargee releases the land transferred from his charge in consideration of his receiving part (or the whole) of the purchase money. Fee: scale 4 on the purchase price.

[10] The plan must be signed by the transferor and the chargee and either by the transferee or by his solicitor on his behalf.

[11] It is sometimes useful to record the state of the mortgage debt, and the sum to be inserted here will be the aggregate amount received by the chargee under the present and previous transfers.

by a [Conveyance] dated, etc. and charged upon and issuing out of the land comprised in the title above referred to shall henceforth be apportioned as follows:

The yearly sum of £—— (part of the said rentcharge) shall henceforth [*or*, from the —— day of —— next] be charged on the land hereby transferred in exoneration of the land [*or*, the part of the land subject thereto] remaining in the title above referred to.

The yearly sum of £—— (the balance of the said rentcharge) shall henceforth [*or*, from the —— day of —— next] be charged on the land [*or*, the part of the land subject thereto] remaining in the title above referred to in exoneration of the land hereby transferred.[12]

4. The relevant covenants implied under the provisions of section 77 of the Law of Property Act 1925 shall be implied in this deed.[13]

5. The Transferee charges the land hereby transferred and the Transferor charges the land remaining in the title above referred to [*or*, the part of the land subject to the said rentcharge remaining in the title above referred to] with the payment of such sums respectively as shall henceforth become payable in respect of the covenants on the part of each of them implied under the provisions of section 77 of the law of Property Act 1925.

[6. *Certificate as to value, if requisite*]

[*To be executed by all parties and attested*]

[12] The definition of "conveyance" in the Law of Property Act, 1925, s. 205 (1) (ii), embraces a Land Registry transfer, so that the remedies of distress and entry for perception, in default of payment of the equitably apportioned sums, will be conferred by virtue of these provisions in the transfer, in pursuance of *ibid.*, s. 190 (1) and (2).

[13] For the reason for inserting this express reference to the implied covenants, see p. 222, *ante*.

FORM 32

Grant by Developer to Builder of separate Rentcharges on each Plot of an Estate [14]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936
County or county borough .....
Title No. .....
Property .....

[*date*] 1. In consideration of moneys advanced and building materials supplied and to be supplied [*or as the case may be*] to the extent or value of —— pounds (£——) by [*grantee*] of, etc. (hereinafter called "the Grantee") to me or on my behalf (the receipt of which is hereby acknowledged) I [*grantor*], of, etc. (hereinafter called "the Grantor") [as beneficial owner] hereby grant unto the Grantee the several perpetual rentcharges of the amounts referred to in the first column of the First Schedule hereto each such rentcharge to accrue from day to day and to be paid free from all deductions (except income tax) by equal [quarterly] payments on [the usual quarter days] in every year the first payments to be made on the —— day of —— next and each such rentcharge to be forever charged upon and issuing out of the land shortly described opposite it in the second and third columns of the First Scheule which refer to the plan annexed hereto [15] and all buildings now erected or hereafter to be erected thereon TOGETHER with the powers and remedies for securing

[14] When an estate developer is proposing to build houses for sale to individual purchasers, his builder may require him to create a rentcharge in his favour in respect of money and materials laid out in the project. If, however, in place of a single rentcharge on all the land, separate rentcharges are created on each plot in the first instance, some complicated apportionments and a progressive increase in the number of indemnities on plots remaining unsold are avoided. This form, which is based upon statutory form 46 (Land Registration Rules, 1925, r. 142), creates separate rentcharges, and in the result the subsequent transfers (see the next form) are far simpler than would otherwise be the case. This deed should be lodged for registration with the documents described on pages 227–228 *ante*. Fee: scale 1 on 20 times the annual sum.

[15] The plan must be signed by the grantor and either by the grantee or by his solicitor on his behalf. It is, of course, vitally important that the actual development of the individual plots exactly follows the extents

and compelling payment of the said rentcharges conferred by section 121 of the Law of Property Act 1925.

2. The Grantor hereby covenants with the Grantee:—

(a) To pay the said several yearly rentcharges in the manner and at the times hereinbefore appointed for payment thereof.

(b) Until all buildings to be built on the land shall have been fully completed fit for habitation to insure them or the parts thereof which shall for the time being be erected against loss or damage by fire and to keep the same so insured in such sum as the surveyor for the time being of the Grantee shall from time to time certify to be the full value of the same and immediately any building or buildings shall have been fully completed fit for habitation to insure it or them against such loss or damage and forever thereafter to keep the same insured in the full value thereof not being less than the sum mentioned in the fourth column of the First Schedule hereto opposite the description of the plot on which the building is erected such insurances to be effected in the —— Office or some other insurance office approved of in writing by the Grantee.

(c) To pay all premiums payable under the provisions of the last sub-clause within [seven] days after the same shall have become due and further at any reasonable time of the day at the request of the Grantee to produce to him or his agent the policy of insurance and the receipt for the current premium and in case of damage by fire to rebuild and reinstate the building or buildings within [one year] of any such damage having occurred.

(d) At all times after dwelling-houses shall have been erected upon the land to keep them and their appurtenances and all sewers drains walls fences and outbuildings in good and substantial repair and once at least in every year upon receipt of not less than [ten] day's previous written notice in that behalf to permit the Grantee and his successors in title and his and their agents to enter in the daytime into and upon the said dwelling-houses and premises and to view the condition thereof and to make good within [two] calendar months after notice in writing all

and positions of the plots as defined on this plan, as otherwise the entire rentcharge scheme will go awry.

defects in repair then found and if the Grantor shall fail to repair the property in accordance with such notice to permit the Grantee to enter into and upon the land and execute and do such works as in the opinion of the Grantee are necessary and to remain in possession of the said premises and receipt of the rents and profits until thereby or otherwise all sums of money expended by the Grantee on such works together with all costs and expenses in connection therewith shall have been fully paid and satisfied.

(e) Not to make any structural alterations to any completed building or erect any new building on the land without the previous approval in writing of the Grantee to the plans and specifications thereof and to make all such alterations or erect such new buildings in strict conformity with such plans and specifications.

(f) On a sale of the land or any part thereof to impose on the purchaser and his successors in title by means of a legally enforceable covenant the restrictive stipulations set out in the Second Schedule hereto.

(g) To give notice in writing to the Grantee of any sale of the land or any part thereof within [one] calendar month of such sale.

[3. *Certificate as to value, if requisite*]

THE FIRST SCHEDULE

Amount of rentcharge	Property out of which rentcharge issues		Amount of insurance
	Plot No. on annexed plan	Name of proposed road	
£15 0s. 0d.	*1*	*Scarlet Street*	*£2250*
£15 0s. 0d.	*3*	*Scarlet Street*	*£2250*
£15 0s. 0d.	*5*	*Scarlet Street*	*£2250*
£15 0s. 0d.	*7*	*Scarlet Street*	*£2250*
£20 0s. 0d.	*2*	*Scarlet Street*	*£3000*
£20 0s. 0d.	*4*	*Scarlet Street*	*£3000*
£20 0s. 0d.	*6*	*Scarlet Street*	*£3000*
£20 0s. 0d.	*8*	*Scarlet Street*	*£3000*
£10 0s. 0d.	*1*	*Ruby Road*	*£1500*
£10 0s. 0d.	*2*	*Ruby Road*	*£1500*
£10 0s. 0d.	*3*	*Ruby Road*	*£1500*
£10 0s. 0d.	*4*	*Ruby Road*	*£1500*
	etc.		

THE SECOND SCHEDULE

Restrictive stipulations

[*To be executed by the Grantor and attested*]

FORM 33

Transfer of Part of the Land in a Title subject to an existing Rentcharge [16]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....
Title No. .....
Property .....

[*date*] 1. in consideration of . . . pounds (£——) the receipt whereof is hereby acknowledged I [*registered proprietor*] of, etc. (hereinafter called "the Transferor") [as beneficial owner] hereby transfer to [*purchaser*] of, etc. (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [17] known as . . . being part of the land comprised in the title above referred to [TOGETHER with the easements set out in the First Schedule hereto but EXCEPT and reserving the easements set out in the Second Schedule hereto] SUBJECT to the payment of the entirety of a rentcharge of £—— created by a Deed dated, etc., referred to in the entry No. . . . of the charges register and to all powers remedies covenants and conditions contained or implied in the said Deed so far as the same relate to the land hereby transferred and are enforceable.

2. The relevant covenants implied under the provisions of section 77 of the Law of Property Act, 1925 shall be implied in

[16] This form may be used in conjunction with the previous one (see note 14 thereto) when the estate developer comes to sell individual houses on the estate. Fees: scale 4.

[17] The plan must be signed by the transferor and by the transferee or by his solicitor on his behalf.

this deed[18] and the Transferee hereby charges the land transferred with the payment of all moneys which may become payable by virtue of the covenants on his part so implied.

[3. The Transferee with the intent of binding the land hereby transferred into whosesoever hands the same may come and so as to benefit and protect the remainder of the land comprised in the title above mentioned and every part thereof [*or otherwise as the case may be*] and so that this covenant shall be enforceable by the Transferor and his successors in title or other the owner or owners for the time being of the said remaining land or any part thereof hereby covenants with the Transferor that the Transferee and his successors in title will forever hereafter observe and perform the stipulations set out in the [Third] Schedule hereto [PROVIDED ALWAYS that upon the Transferee ceasing to have any estate or interest in the land hereby transferred he shall thenceforth be absolved from all personal liability for any breach of the said stipulations that may be thereafter committed in relation to the land hereby transferred]]

[4. *Certificate as to value, if requisite*]

[The First Schedule]
Easements granted to the Transferee

[The Second Schedule]
Easements excepted and reserved to the Transferor

The [Third] Schedule
Restrictive stipulations

[*To be executed by both parties and attested*]

[18] For the reason for inserting this clause, see note 11 to form 13, p. 704, *ante*.

FORM 34

Transfer of a Building Plot being Part of the Land in a Title subject to a Rentcharge which has already been Apportioned [19]

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 and 1936

County or county borough .....
Title No. .....
Property .....

[*date*] 1. In consideration of . . . pounds (£——) the receipt whereof is hereby acknowledged I [*registered proprietor of land*] of, etc. (hereinafter called "the Transferor") [as beneficial owner] hereby transfer to [*purchaser*] of, etc. (hereinafter called "the Transferee") the land shown and edged with red on the accompanying plan [20] known as . . . being part of the land comprised in the title above referred to [TOGETHER with the easements set out in the First Schedule hereto but EXCEPT and reserving the easements set out in the Second Schedule hereto] subject to the formally [informally] apportioned annual sum of . . . pounds (£——) being part of the perpetual yearly rentcharge of . . . pounds (£——) created by a [Conveyance] dated, etc., to which the land transferred (with other land) is subject the said apportionment having been effected by a Deed dated, etc.[21] and subject also to all express and implied powers remedies conditions and covenants (other than the covenant for payment of the entirety of the rentcharge) contained in the said [Conveyance] dated . . . so far as the same relate to the land transferred and are enforceable [and subject also to but with the benefit of the

[19] This form may be used whenever a previous deed has apportioned a rentcharge either formally or informally in respect of the land transferred. It is based upon forms 20 and 33 in the Schedule to the Land Registration Rules, 1925, the latter relating to a previously effected apportionment of rent under a lease. Fees: scale 4.

[20] The plan should be signed by the transferor and either by the transferee or by his solicitor on his behalf.

[21] This deed should already have been noted against the transferor's registered title.

cross covenants and charges contained or implied in the said Deed dated . . .]

[2. *Certificate as to value, if requisite*]

[The First Schedule]
Easements granted to the Transferee

[The Second Schedule]
Easements excepted and reserved

[*To be executed by both parties and attested*]

FORM 35

Deed providing for division of capital money between Tenant for Life and Remainderman and Release to the Trustees

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

Parties.

THIS DEED is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Tenant for Life) of the first part B of etc. (hereinafter called the Remainderman) of the second part and C of etc. and D of etc. (hereinafter collectively referred to as the Trustees) of the third part.

WHEREAS:

Recitals. Title to capital money.

(1) Under and by virtue of a Settlement (hereinafter called the Settlement) dated the —— day of —— and made between etc. and a Disentailing Deed dated the —— day of —— 19— and made between the Remainderman of the 1st part the Tenant for Life of the second part and the said C of the third part the capital money mentioned in the Schedule hereto is now held by the Trustees as the Trustees of the Settlement for the purposes of the Settled Land Act 1925 UPON TRUST for the Tenant for Life during his life with remainder IN TRUST for the Remainderman absolutely.

Desire to divide.

(2) The Tenant for Life and the Remainderman are desirous that the said capital money shall be divided between them.

Valuation of interests.

(3) The respective interests of the Tenant for Life and the Remainderman in the said capital money have been valued for the purpose of such division by Messrs. —— having regard to the prospective amount of duty [at the rate of £—— per cent.] in respect of the Remainderman's share in the event of the death of the Tenant for Life within five years of the date hereof at £X and £Y respectively.

Certificate as to duty.

[(4) The trustees have obtained from the Commissioners of Inland Revenue a certificate that the amount which may properly be regarded as the maximum prospective amount of duty payable at the rate aforesaid in respect of the said sum of £Y in the event of the death of the Tenant for Life within five years of the date hereof is £Z.] [1]

[1] If there is a doubt as to the rate of duty, application for the certificate should be made before the deed is executed, and the amount of the shares varied accordingly. The valuation should specify the values of the interests on the footing of the possible rates of duty. The rate will depend upon the other aggregable property of the tenant for life, the value of which may be difficult to ascertain. It is thought that the Commissioners would assess the rate of duty while the deed is in draft in order to enable the shares to be ascertained and give the necessary certificate in regard to the amount when so ascertained. The trustees will retain the amount certified out of the remainderman's share and invest it in accordance with his directions and pay the interest to him. The investment should be made in trustee or Government securities. If this is done, the trustees will not be liable for any subsequent depreciation in the retained fund. If the tenant for life dies during the third year of the five-year period the duty will be reduced by 15 per cent., if he dies in the fourth year by 30 per cent., and if he dies in the fifth year, by 60 per cent.—Finance Act, 1960, s. 64 (1). It has been the practice to apply to the Commissioners after the five-year period for an assurance that the fund is not required for duty, and upon receiving such assurance to pay it over to the remainderman. The assurance was given on satisfying the Commissioners that the tenant for life had been excluded from possession and enjoyment and of any benefit to him by contract or otherwise during the whole period, and that no operations were contemplated by which he might obtain such possession, enjoyment or benefit. For the purpose of relief under s. 64, however, the tenant for life must under subs. (3) be excluded for the necessary period *up to his death*, and it seems therefore that no such assurance would be given at the end of the third year or subsequent years as to any part of the retained fund: *cf. Chick* v. *Commissioner of Stamp Duties* [1958] 2 All E.R. at p. 628; *Commissioners of Stamp Duties* v. *Permanent Trustee Co.* [1956] 2 All E.R. 512.

The trustees' rights and duties in respect of the retained fund depend upon s. 44 of the Finance Act, 1950, and it is not thought necessary to

(5) The Tenant for Life and the Remainderman have agreed to release the Trustees in manner hereinafter appearing. Agreement for release.

NOW THIS DEED WITNESSETH and it is hereby agreed as follows:

1. THE Tenant for Life and the Remainderman hereby agree that the said capital money shall be divisible between them in accordance with the said valuation and that the share of the Tenant for Life shall accordingly be £X and the share of the Remainderman shall be £Y. Agreement to divide.

2. IN pursuance of the said agreement the Tenant for Life and the Remainderman hereby release the Trustees and each of them their and each of their personal representatives from the said capital money and from all actions and proceedings in relation thereto and the division thereof as aforesaid PROVIDED and it is hereby agreed that this Release shall not take effect in relation to the [said] sum to be retained to answer the prospective claim for duty until the whole thereof has been transferred to the Remainderman and that the Trustees shall not be bound to Transfer the whole or any part of the [said] sum to the Remainderman during the lifetime of the Tenant for Life unless and until the assurance of the said Commissioners that the whole or such part is not required for the payment of duty, is obtained Release to trustees.

3. THE costs of and incidental to this Deed and the division of the said capital money and the [said] Certificate as to the prospective amount of duty payable in respect of the remainderman's share shall be paid in equal shares by the Tenant for Life and the Remainderman. Costs.

IN WITNESS, *etc.*

provide for them specifically in the deed. A release to the trustees does not appear to be strictly necessary, but as they are not paying strictly in accordance with the trusts, they would appear to be entitled to require one.

FORM 36

Conveyance of freehold property parts of which are held by two different sets of Trustees on distinct trusts, and the remainder by personal representatives, the Trustees and personal representatives having agreed to concur in a sale of the entirety at an entire price, which has been apportioned between them [1]

(Drafted by E. H. Bodkin, of Lincoln's Inn)

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of etc. and B of etc. (hereinafter called the First Vendors) of the first part C of etc. and D of etc. (hereinafter called the Second Vendors) of the second part E of etc. and F of etc. (hereinafter called the Third Vendors) of the third part and G of etc. (hereinafter called the Purchaser) of the fourth part.

WHEREAS:

Recitals: as to title to first part of property.

(1) H late of —— who died on the —— day of 19— (being at his death the estate owner of the fee simple in possession free from incumbrances of the portion of the property hereinafter

[1] In certain cases it will obviously to be the advantage of the beneficiaries to sell property, parts of which are held on separate trusts, as one unit; or for trustees to concur with the absolute owner of part in selling the whole. This will be so, *e.g.*, where a house and the garden are owned separately, or a piece of land in the centre of a park is separately owned, or where the property has been occupied, or farmed as a whole, by a single tenant; or when trustees concur with a lessee to sell with vacant possession. In such cases the trustees can concur in a sale of the whole, and the purchaser need not require evidence that a joint sale is beneficial —*Re Cooper & Allen's Contract* (1876) 4 Ch.D. 802 ; Trustee Act, 1925, s. 12 (1). But trustees should not concur in a sale if there are matters affecting the title to the property not vested in them which might prejudice the sale. It was considered in *Re Allen & Driscoll's Contract supra*, that the purchaser was concerned to see that a joint sale was beneficial, and that the purchase money was properly apportioned in accordance with a valuation of the respective parts of the property, made either before or after the contract. See also *Rede* v. *Oakes* (1864) 4 D.J. & S. 505 ; *Morris* v. *Debenham* (1875) 2 Ch.D. 540. But the decision was given before there was any statutory power for trustees to concur in a sale, and it may be that now, having regard to s. 12 of the Trustee Act, 1925, the purchaser could assume that they had properly apportioned the purchase money between them.

conveyed which is specified in the First Part of the First Schedule hereto duly made his Will dated the —— day of —— 19— and thereby appointed the First Vendors to be the executors and trustees thereof who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—.

(2) By an Assent dated the —— day of —— 19— and signed by the First Vendors the First Vendors as personal representatives of the said H deceased assented to the vesting in themselves in fee simple of the said portion of the said property hereby conveyed which is specified in the First Part of the First Schedule hereto UPON TRUST to sell the same or any part thereof and to stand possessed of the net proceeds of sale and the net rents and profits until sale upon the trusts therein mentioned.

(3) The portion of the said property hereby conveyed which is specified in the Second Part of the First Schedule hereto was immediately before the commencement of the Law of Property Act 1925 vested at law and in equity in J. and K. in fee simple as tenants in common in equal shares free from incumbrances affecting the entirety or the undivided shares therein.

As to title to second part of property.

(4) By virtue of the Transitional Provisions of the said Act the said portion of the said property became on the first day of January 1926 vested in the said J and K as joint tenants on the statutory trusts as defined in the said Act.

(5) The said J died on the —— day of —— 19—.

(6) The said K died on the —— day of —— 19— having by his Will dated the —— day of —— 19— appointed L and M to be the executors thereof who duly proved and registered the same in the ——Probate Registry on the —— day of —— 19—.

(7) By an Appointment dated the —— day of —— 19— and made between the said L and M of the one part and the Second Vendors of the other part the said L and M appointed the Second Vendors to be trustees of the said portion of the said property hereinafter conveyed which is specified in the Second Part of the First Schedule hereto in the place of the said J. and K.

(8) N late of —— being at his death the estate owner of the fee simple in possession free from incumbrances of the portion

As to title to third part of property.

of the said property hereinafter conveyed which is described in the Third Part of the First Schedule hereto died on the —— day of —— 19— having by his Will dated the —— day of —— 19— appointed the Third Vendors to be the executors thereof who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—.

(9) The Third Vendors have not made any assent or conveyance in respect of the legal estate in the last-mentioned portion of the said property or any part thereof.

Agreement for sale and apportionment of purchase money.

(10) The First Vendors and the Second Vendors in exercise of the said respective trusts for sale and the Third Vendors in exercise of the statutory powers vested in them as personal representatives of the said N have concurred in agreeing with the Purchaser for the sale to him of the said property hereinafter conveyed and the fee simple in possession thereof free from incumbrances at the price of £X and the said purchase money has in accordance with a valuation of the said respective portions thereof made by Messrs —— been apportioned *As to £——* part thereof to the said portion of the said property hereinafter conveyed which is specified in the First Part of the First Schedule hereto *As to £——* part thereof to the said portion of the said property which is specified in the Second Part of the First Schedule hereto and *As to £——* the remainder thereof to the said portion of the said property which is specified in the Third Part of the First Schedule hereto.

NOW THIS DEED WITNESSETH as follows:

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £X on or before the execution hereof paid by the Purchaser *As to £——* part thereof to the First Vendors as such trustees as aforesaid (the receipt and payment whereof the First Vendors hereby acknowledge) *As to £——* part thereof to the Second Vendors as such trustees as aforesaid (the receipt and payment whereof the Second Vendors hereby acknowledge) and *As to £——* the remainder thereof to the Third Vendors as such personal representatives as aforesaid (the receipt and payment whereof the Third Vendors hereby acknowledge) the First Vendors as regards the portion of the said property hereby conveyed which

is specified in the First Part of the First Schedule hereto AS TRUSTEES and in exercise of the trust for sale in the said Assent hereby convey and the Second Vendors as regards the portion of the said property specified in the Second Part of the First Schedule hereto AS TRUSTEES and in exercise of the statutory trust for sale aforesaid hereby convey and the Third Vendors as regards the said portion of the said property specified in the Third Part of the First Schedule hereto AS PERSONAL REPRESENTATIVES of the said N hereby convey unto the Purchaser ALL THOSE pieces or parcels of land situate in the Parish of —— in the County of —— TOGETHER with the messuage or tenement and outbuildings known as —— erected on part thereof All which pieces or parcels of land are now in the occupation of the Purchaser as tenant thereof and are more particularly described in the First Second and Third Parts of the First Schedule hereto and are for the purpose of identification and not of limitation delineated on the plan hereto annexed and thereon surrounded with a red verge such plan being taken from the Ordnance Survey (Ed.) of the said Parish and the numbers in the said Schedule referring to the corresponding numbers in such map TO HOLD all the premises unto the Purchaser in fee simple.

Acknowledgment for production of documents.

2. THE First Vendors as to the documents mentioned in the Second Schedule hereto possession whereof is retained by them and the Second Vendors as to the documents mentioned in the Third Schedule hereto possession whereof is retained by them and the Third Vendors as to the documents mentioned in the Fourth Schedule hereto possession whereof is retained by them hereby respectively acknowledge the right of the Purchaser to the production of the documents mentioned in the Second Third and Fourth Schedules hereto and to delivery of copies thereof.

[3. Certificate of Value.]

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

PART I

Ordnance No.	*Name*	*State of Cultivation*	*Area*

[Parts II and III will be in a similar form]

THE SECOND SCHEDULE ABOVE REFERRED TO
[This will contain the documents retained by the First Vendors]

THE THIRD SCHEDULE ABOVE REFERRED TO
[This will contain the documents retained by the Second Vendors]

THE FOURTH SCHEDULE ABOVE REFERRED TO
[This will contain the documents retained by the Third Vendors.]

FORM 37

Conveyance of freehold premises originally held for a long term which has been enlarged into a fee simple, the original lease having been lost. Variations where part of the premises comprised in the lease are sold [1]

Parties.

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Vendor) of the one part and B of etc. (hereinafter called the Purchaser) of the other part.

WHEREAS:

Recitals; Lease;

(1) By a Lease (hereinafter called the Lease) dated etc. and made between C of the one part and D of the other part the property hereinafter described [with other property] was demised

[1] Even if the purchaser is by the contract required to assume the validity of the enlargement deed and to make no objection on account of the original lease not being produced, it is thought that he can require the Vendor to assign to him expressly any estate or interest in the term which would be vested in him if the enlargement deed were ineffective, notwithstanding that such interest might pass under the "all the estate" clause implied in the conveyance under s. 63 of the Law of Property Act, 1925. The vendor may not be able without production of the lease to prove that all the conditions for the validity of the enlargement were satisfied, *e.g.*, that there was no right of re-entry for condition broken.

by the said C to the said D for the term of —— years at the yearly rent of five shillings and subject to the covenants on the part of the lessee therein contained.

Devolution of Lease.

(2) By divers mesne assurances acts in the law and events and ultimately by an Assignment dated etc. and made between E. of the one part and [the Vendor] [F] of the other part the premises comprised in the Lease became absolutely vested in [the Vendor] [F] for all the residue of the said term of —— years granted by the Lease subject to the rent reserved by and the covenants on the part of the lessee in the Lease contained.

Assignment of part of premises.

[(3) By an Assignment dated etc. and made between F of the one part and the Vendor of the other part the said property hereinafter described (being part of the premises comprised in the Lease) was assigned to the Vendor for the residue of the said term of —— years granted by the Lease at the apportioned rent of —— shillings subject to the covenants by the lessee in the Lease contained and thenceforth to be observed and performed so far as the same related to the premises and the Assignment now in recital included the statutory covenants on the part of the Vendor and the said F to pay the rent apportioned to and to observe and perform the covenants affecting the premises retained and assigned respectively.]

Loss of Lease.

(4) The Lease has been lost or destroyed and for the continuous period of twenty years and upwards prior to the date of the Enlargement Deed next hereinafter recited no rent under the Lease had been paid or demanded [in respect of the property hereinafter described].[2]

Deed of Enlargement.

(5) By a Deed of Enlargement dated etc. and made by the Vendor the Vendor by virtue of the power conferred by s. 153 of the Law of Property Act 1925 declared that from and after the execution thereof the residue of the said term of —— years granted by the Lease should [as regards the property hereinafter described] be enlarged into a fee simple.

[2] Non-payment of the apportioned part of the rent would not, it seems, entitle the vendor to enlarge the term if the apportionment had been made without the landlord's consent, and the whole rent were recovered from the owner of the other part of the property.

Agreement for sale.

(6) The Vendor has agreed to sell the said property hereinafter described and the fee simple in possession therein free from incumbrances to the Purchaser at the price of £——.

NOW THIS DEED WITNESSETH as follows:

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £—— on or before the execution hereof paid by the Purchaser to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby conveys and as regards any estate in the said term of —— years therein granted by the Lease remaining vested in him

Parcels.

hereby assigns unto the Purchaser ALL THAT etc. [being part of the premises comprised in the Lease]

Habendum.

TO HOLD unto the Purchaser in fee simple or for such estate as the Vendor has power to dispose [subject to and with the benefit (so far as subsisting and capable of being enforced) of the covenants in the Lease and the said recited Assignment for securing the payment of the apportioned rent and the observance and performance of the Covenants in the Lease and for indemnity].

[2. Acknowledgment and undertaking as to documents, if required.]

[3. Certificate of Value.]

IN WITNESS, *etc.*

FORM 38

Settlement of income of shares on discretionary trusts for the benefit of an adult beneficiary with provisions envisaging a sub-settlement of surplus income so as to secure its accumulation [1]

I

Settlement

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN AB of etc. (hereinafter called "the Settlor") of the one part and

[1] This form envisages that the settlor desires the income of the trust fund to be applied by the trustees upon discretionary trusts for the benefit of the principal beneficiary and that any income from time to time not so applied should be added to the capital of the trust fund. The difficulty which arises in this connection is that the addition of surplus income to the capital of the fund would constitute an accumulation, with the result that unless the power to make such additions were limited to one of the four periods prescribed by section 164 (1) of the Law of Property Act, 1925, such power would be void as to any excess beyond the permitted periods. In the circumstances of the case, the only period out of the four which it would be open to the settlor to select would be the life of the settlor, but the choice of this period is open to two objections. First, it would, of course, come to an end on the death of the settlor so that in the event of this occurring before the principal beneficiary attained the age of fifty years, the settlor's intention could not, in this respect, be further implemented. Secondly, since the power to accumulate would come to an end on the death of the settlor, estate duty would become payable on the capital value of the fund even though the settlor died more than five years after the date of the settlement. In order to overcome these objections, potential beneficiaries other than the principal beneficiary are included amongst the possible objects of the discretionary trust (see clauses 1 (4) and 3 of the settlement) and this is then supplemented by the accompanying draft declaration of trust, the object of which is to bring back any income which might be paid to such other beneficiaries into the original settlement. The way in which the scheme would work would be as follows. If, in any year, the trustees of the settlement are not desirous of paying over the whole of the income to or for the benefit of the principal beneficiary, they should, in the exercise of the discretion conferred by clause 3 of the settlement, pay such surplus income (which may, of course, amount to the whole of the income of the trust fund in any particular year) to one or more of the "other beneficiaries." Upon the receipt by such other beneficiaries of such income the same will immediately become subject in their hands to the provisions of the declaration of trust. Under clause 2 of this deed, such income must be paid or applied to or for the benefit of any one or more of the persons therein named including the trustees of the original settlement. It is, of course, possible for the income to be paid to any of such persons so that it is not absolutely certain that it will come back to

CD of etc. and EF of etc. (hereinafter called "the Trustees") of the other part

WHEREAS:

(1) The Settlor is desirous of making such provision and of declaring such trusts for the benefit of such persons and objects as are hereinafter mentioned.

(2) With a view to the settlement herein contained the Settlor is causing to be transferred into the joint names of the Trustees a fund consisting of —— and it is anticipated that the Settlor may hereafter cause to be transferred or paid to the Trustees or that the Trustees may otherwise receive further investments moneys or other property to be held upon the trusts and with and subject to the powers and provisions hereinafter declared and contained.

Now in pursuance of the said desire and in consideration of the premises THIS DEED WITNESSETH and it is hereby agreed and declared as follows:

1. In this Settlement the following expressions shall unless the context otherwise requires have the following meanings respectively that is to say:

the trustees (this uncertainty is necessary in order to secure that when the trustees under the settlement exercise their discretion in favour of the other beneficiaries, they cannot be certain that it will come back to themselves; if they were certain of this, the exercise of the discretion in such a way would probably infringe the accumulations rules) but if the other beneficiaries are selected with care they could presumably be trusted to exercise their discretion in favour of the trustees so that there would, in effect, be an accumulation of the surplus income. All it amounts to in substance is that the settlor must rely on two sets of "trustees" rather than one, *i.e.*, the trustees under the settlement on the one hand and the (so-called) "other beneficiaries" on the other (who, by reason of the provisions of the declaration of trust, will, in fact, be trustees of what they receive). It is essential, however, for the operation of the scheme, that the declaration of trust should be executed after the settlement so that the former will constitute a disposition in its own right and not merely be part of the same transaction. Accordingly, the settlor will have to run a risk as to whether, after the execution of the settlement, the "other beneficiaries" will agree to execute the Declaration of Trust, but here again, it is largely a matter of the selection of the "right" other beneficiaries. In this connection, it is also essential that such beneficiaries should not also be or include any of the trustees of the settlement.

(1) "the Trustees" shall mean the Trustees and the survivor of them or other the trustees or trustee for the time being hereof

(2) "the Trust Fund" shall mean the said —— and all investments property and moneys transferred or paid to and accepted by the Trustees upon the trusts and with and subject to the powers and provisions of this Settlement and the investments property and moneys from time to time and for the time being representing the same or any part or parts thereof.

(3) "the Principal Beneficiary" shall mean —— of ——.

(4) "the other Beneficiaries" shall mean —— of ——, —— of ——, and —— of ——.

2. The trustees shall stand possessed of the Trust Fund upon trust either to retain the same in the form of the investments property and moneys for the time being constituting the Trust Fund or at any time or times and from time to time with the consent of the Settlor during his life and thereafter at the discretion of the Trustees to realise and vary or apply the said investments property and money in the manner hereinafter authorised for the investment and application of moneys.

3. Pending the attainment by any person or persons or charitable institution or institutions of an indefeasible vested interest in the entirety of the capital of the Trust Fund hereunder the Trustees shall pay or apply the whole of the income of the Trust Fund as it arises to or for the benefit of such of them the Principal Beneficiary and the other Beneficiaries as shall for the time being be living and in such shares and manner as the Trustees shall in their absolute discretion from time to time think fit.

4. Subject to the foregoing provisions hereof the Trustees shall stand possessed of the capital and income of the Trust Fund upon trust:

(1) If and when the Principal Beneficiary shall attain the age of [50] years for the Principal Beneficiary absolutely and subject thereto.

(2) For such of the children or child of the Principal Beneficiary as shall survive the Principal Beneficiary and shall (whether before or after the death of the Principal Beneficiary)

attain the age of twenty-one years and if more than one in equal shares and subject thereto.

(3) For such charitable institution or charitable institutions in such manner and if more than one in such shares in all respects as the Trustees shall during the life of the Principal Beneficiary or within twenty-one years of her death by writing appoint and in default of and subject to any such appointment for —— absolutely.

5. Notwithstanding the trusts powers and provisions hereinbefore declared and contained of and concerning the Trust Fund and the income thereof the Trustees shall in relation to so much of the Trust Fund as shall for the time being and from time to time remain vested in the Trustees have power in their absolute discretion at any time or times and from time to time to raise the whole or any part or parts of the capital of the Trust Fund and pay apply or appropriate the same as the Trustees shall in their absolute discretion think fit to or for the benefit of the Principal Beneficiary notwithstanding that the interest of the Principal Beneficiary in the capital of the Trust Fund shall at the date or respective dates of such payment application or appropriation be a contingent interest and if and as often as the Trustees shall exercise the discretion hereby conferred in relation to a part only of the Trust Fund the trusts powers and provisions herein contained shall have effect as if the part or parts of the Trust Fund so affected had never formed part of the Trust Fund.

6. Moneys falling to be invested under the trusts and provisions hereof may be invested or applied in the purchase of or at interest upon the security of such stocks funds securities or other investments or property of whatever nature and wheresoever situate (including the purchase and also the application of moneys for the improvement of a freehold or leasehold dwelling-house for use as a residence by the Principal Beneficiary) and whether involving liability or not or upon such personal credit with or without security as the Trustees with the consent of the Settlor during his life and thereafter at their discretion shall think fit.

7. The power of appointing a new trustee or new trustees hereof shall be vested in the Settlor during his life and subject thereto the statutory power for the appointment of new trustees shall be applicable hereto.

8. Any trustee for the time being hereof being a solicitor accountant or other person engaged in any profession or business shall be entitled to charge retain and be paid all usual professional or proper charges for business transacted time expended and acts done by him or his firm in connection with the trusts hereof including matters which might or should have been attended to in person by a trustee not being a solicitor accountant or other person so engaged.

9. Notwithstanding anything to the contrary hereinbefore expressed or implied no discretion or power conferred by this Settlement on any person shall be exercised so as to cause any part of the income or capital of the Trust Fund or any other benefit whatsoever to become payable to or applicable for the benefit of the Settlor or any wife of the Settlor.

IN WITNESS, *etc.*

II

Delaration of Trust to accompany last precedent

THIS DECLARATION OF TRUST is made the —— day of ——[2] 19— by —— of —— in the County of —— —— of —— in the County of —— and —— of —— in the County of —— (hereinafter called "the Settlors"[3] which expression shall where the context so admits include the survivors or survivor of them)

WHEREAS:

(1) By a Settlement (hereinafter called "the Settlement") dated the —— day of —— 19— and made between AB of the one part and CD and EF (therein and hereinafter called "the Trustees") of the other part it was provided (*inter alia*) that during the period therein mentioned the Trustees should pay or

[2] This date will be after the date of the settlement.

[3] The settlors will be the persons defined in clause 1 (4) of the settlement as "the other Beneficiaries."

apply the whole of the income of a fund therein (and hereinafter) described as "the Trust Fund" as it arose to or for the benefit of such of them the person therein described as "the Principal Beneficiary" and the Settlors as should for the time being be living and in such shares and manner as the Trustees should in their absolute discretion from time to time think fit.

(2) The Settlors are desirous of declaring such trusts and making such provision as are hereinafter declared and contained of and concerning all or any of the income of the Trust Fund as may at any time and from time to time be paid or applied for their benefit or for the benefit of any one or more of them under the provisions in that behalf contained in the Settlement.

Now in pursuance of the said desire and in consideration of the premises THIS DEED WITNESSETH and it is hereby agreed and declared that the Settlors and each of them shall stand possessed of all or any moneys they or any one or more of them may at any time and from time to time receive from the Trustees or which may otherwise be applied for their benefit or for the benefit of any one or more of them under the trusts powers and provisions in that behalf of and concerning the income of the Trust Fund contained in the Settlement upon trust to pay hold or apply the same as it arises to or for the benefit of all or such one or more to the exclusion of the other or others of the following persons in such shares and (subject to the provisions hereinafter contained) in such manner as the Settlors shall in their absolute discretion think fit that is to say:

(1)

(2)

(3) The Trustees (as the same are defined by and in the Settlement)

Provided that where under the foregoing provisions hereof any payment is made to or benefit held upon trust for the Trustees the same shall only be so made or held upon the Trustees' accepting and undertaking to hold the same as part of the Trust Fund.

IN WITNESS, *etc.*

INDEX

TO THE CONVEYANCER, VOLUMES 21–24

ACCUMULATIONS,
beyond statutory period, *21*, 293
during minority of grandchildren, *22*, 165
perpetuities, *21*, 295
power of advancement, *24*, 240
ACKNOWLEDGMENT,
for production, *22*, **780**; *23*, 115; *24*, **775**
ADEMPTION,
bequest of shares, *21*, 73
election or, *21*, 70
ADMINISTRATION OF ASSETS,
marshalling, *24*, 76
ADMINISTRATORS,
pendente lite, *22*, 304
postal applications for grant, *23*, 242
ADOPTION,
wills, conflict of laws, *21*, 237, 391
ADVANCEMENT,
creation of sub-trusts, *23*, 27
delegation by trustees, *23*, 396, 423
husband and wife, *23*, 54, 221
inquiry as to use by beneficiary, *22*, 144
intestacy, *21*, 74, 309
perpetuities, *22*, 300
power of, *22*, 413, **740**, **774**; *23*, **676**; *24*, 240
power to appoint investments, *22*, **755**
restriction, *23*, **682**
ADVERTISEMENTS,
licence to display, *23*, 142
AGENCY,
common, 305
deposit paid to agent, *23*, 220
AGREEMENT,
between contractor and sub-contractor, *22*, **686**
between shareholders, *22*, **783**
for sale with contract to build house, *21*, **651**
for servicing machinery, *21*, **719**
not to sell except with vacant possession, *22*, **663**
quarrying, *22*, **723**
AGRICULTURAL HOLDINGS,
approval by Minister, *24*, 362
arbitration, *24*, 476
compensation, notice of intention to claim, *24*, 372
death of tenant, *24*, 367
fixtures, removal, *24*, 369
good estate management, *24*, 367, 434
grazing agreement, *21*, 310; *24*, 361
improvements, *24*, 193
AGRICULTURAL HOLDINGS—*cont.*
notice to quit, *21*, 95; *22*, 305, 306; *24*, 26, 155
rent, *24*, 179
repairs, *21*, 239; *23*, 140; *24*, 288
security of tenure, *24*, 29, 130
severance of reversion, *24*, 468
sub-tenants, *24*, 28, 139
surrender, *24*, 371
tenancy for fixed term, *24*, 359
tenancy for 1½ years, *21*, **685**; *24*, 77, 363, 520
tenancy from year to year, *21*, **683**
AMERICAN BAR ASSOCIATION,
convention, *21*, 325
ANCIENT DEMESNE,
tenure, *24*, 429
ANIMALS,
trusts for, *24*, 281
APPOINTMENT OF NEW TRUSTEES,
after completion of administration, *21*, 390
APPROPRIATION,
deed of, *22*, **745**
power of, *22*, **754**; *23*, **674**
ARBITRATION,
landlord and tenant, *23*, **696**
ARCHITECTS,
new streets, *22*, 120
ARMED FORCES,
allotments, *23*, 54
soldier's will, *22*, 302
ASSENT,
condition making conclusive, *23*, **759**
gift of business, *23*, **662**
implied, *21*, 167
infant's share, *22*, **749**
ASSIGNMENT,
covenant as to, *21*, **749**; *23*, 226, **694**
priorities, *23*, 56

BAHAMAS,
settlement, *23*, 198, **666**
BANKRUPTCY,
compromise, *22*, **667**
conveyance by joint tenants, *24*, **651**
conveyance to defraud, *23*, 134
discretionary trusts, *21*, 61
protective trusts, *21*, 110
BILLS OF EXCHANGE,
endorsement, *21*, 345
BILLS OF LADING,
clean bill, *22*, 159
BOOK DEBTS,
assignment, *23*, **772**

[*Black figures indicate Precedents.*]

BORROWING,
control, *22*, 189, 327
BOUNDARIES,
line of hedge, *21*, 303
projections, *21*, 164
registered land, *21*, 162, 477
BUILDING CONTRACTS,
insurance, *22*, 325
BUILDING LEASE,
standard clauses, *22*, **760**
BUILDING SOCIETIES,
appeals, *24*, 500
Building Societies Act, 1960...*24*, 494
exchequer advances, *23*, 298
guarantees, *24*, 504
investment powers, *24*, 503
limits of advances, *24*, 496
loans, *24*, 3
notices, *23*, 410
powers of registrar, *24*, 502
protection of depositors, *24*, 498
trustee status, *23*, 297
valuations, *24*, 505

CAPITAL AND INCOME,
apportionment, *22*, **752**; *23*, **668**
planning compensation, *21*, 388; *22*, 76
CAPITAL MONEY,
division, *24*, **769**
CARAVANS,
licence to park, *21*, **707**
CHANCERY DIVISION,
law and equity, *22*, 251
CHARITIES,
accounts, *24*, 404
agreement for sale, *22*, **731**
alphabet reform, *21*, 235
central authorities, *24*, 396
Charities Act, 1960...*24*, 88, 390
charters, *24*, 410
children's home, *23*, 59
common good, *24*, 419
dealings with property, *24*, 416
disaster fund, *22*, 145
education, *21*, 72
executors to decide identity, *24*, **669**
exempt, *24*, 393
gifts to, *24*, 403
gifts to holder of office, *24*, 306
gifts to non-charitable bodies, *24*, 278
impracticability, *22*, 147
inflation, *22*, 147
inquiries, *24*, 404
institution for juveniles, *22*, 468
investment clause, *23*, 59; *24*, 244
local authorities, *24*, 405
merger, *21*, 165
miner's welfare, *23*, 18
mortmain, *24*, 421
music, *21*, 234
non-existent institution, *21*, 236
nurses, *22*, **708**; *23*, 224
official custodian, *24*, 411

CHARITIES—*cont.*
perpetual gift of income, *24*, **153**
prerogative, *23*, 479
proceedings, *24*, 415
rating, *24*, 74
recreation, *23*, 15, 383
register, *24*, 399
resulting trust, *22*, 145
schemes, *24*, 411
severability, *22*, 391
social welfare, *23*, 365
stamp duty, *22*, 219
taxation, *24*, 394
trust deed, *23*, **743**, **745**
uncertainty, *24*, 73, 519
unidentifiable donors, *24*, 409
zoological society, *23*, 58
CHEQUES,
endorsement, *21*, 345, 489
CLEAN AIR,
Crown, *22*, 217
furnaces, *22*, 213
height of chimneys, *22*, 213
London, *22*, 216
nuisance, *22*, 214
responsibility, *22*, 215
smoke control, *22*, 210
COMMISSION,
estate agents, *22*, 323; *23*, 305; *24*, 321
COMMONS,
Lands Clauses Acts, *23*, 266
COMMORIENTES,
clauses in will, *22*, 1
estate duty, *22*, 310
COMPANIES,
agreement between shareholders, *21*, **721**
agreement for protection of directors, *23*, **730**
alternate directors, *21*, 381, **746**
appointment of receiver, *24*, 428
assignment of policy, *23*, **765**
bequest, *22*, 231
bonus shares, *22*, 398, 458
class rights, *22*, 126, 168; *23*, 249, 255
contracts, *21*, 465
co-operative shareholding agreement, *23*, **727**
covenant to create, *22*, **669**
directors, conflict of interest and duty, *24*, 170
director's remuneration, *23*, **679**
incidence of capital reduction, *23*, 244
mortgage of shares, *21*, **712**; *22*, **679**, **684**; *23*, **761**
mortgage, registration, *22*, 55
oppression, *22*, 435; *23*, 255
option to purchase, *22*, **783**; *23*, **715**
overseas trade corporations, *21*, 370
pre-emptive rights, *22*, 315; *23*, 42, 242
residence, *22* 397; *24*, 158
searches, *23*, 118

[*Black figures indicate Precedents.*]

COMPANIES—*cont.*
service agreement, *21*, **752**
shares, nature of, *21*, 433
shares, partition, *24*, **737**
terms of issue, *22*, 282
COMPENSATION,
business tenants, *23*, 11
compulsory purchase, *21*, 393; *23*, 87, 336
de-requisitioning, *22*, 297
highways, *23*, 454
land drainage, *22*, 65
Lands Clauses Acts, *23*, 265
town and country planning, *22*, 178
unfit houses, *22*, 264
COMPULSORY PURCHASE,
abandonment, *21*, 394
compensation, *21*, 393; *23*, 87, 336
fraud, *21*, 455
highways, *23*, 454
invalid order, *21*, 248
Lands Clauses Acts, *23*, 260
long-standing notices to treat, *23*, 95, 339
CONFLICT OF LAWS,
adoption, *21*, 237, 391
community of property, *24*, 167
power of advancement, *22*, 144
power of appointment, *21*, 233
CONTRACT,
company, *21*, 465
compensation on derequisition, *22*, 297
completion, *23*, 302; *24*, 147, 149
condition making assent conclusive, *23*, **759**
condition precedent, *24*, 147
corporations, *24*, 337
delay in exchanging, *23*, 411
development of land, *23*, **733**
estimate, payment for, *21*, 396
goods or land, *22*, 137
intending personal representatives, *22*, 83
intention to create legal relationship, *24*, 150
joinder of documents, *22*, 275
memorandum, *22*, 61
national conditions, *23*, 301
parish council, *22*, **731**
registered land, *22*, 18, 22
rescission, *23*, 394
title of vendor, *24*, 238
CONVERSION,
contract for sale of land, *24*, 47
CONVEYANCE,
by joint tenants, one being bankrupt, *24*, **651**
Lands Clauses Acts, *23*, 265
lock-up garage, *23*, **708**
property held by two sets of trustees, *24*, **772**
property held for enlarged term, *24*, **776**
recital of unincumbered seisin, *22*, 140
CONVEYANCE—*cont.*
stamp duty, *22*, 167, 218, 244
uncompleted sales subject to mortgage, *23*, 85, **654**
COPYHOLDS,
Lands Clauses Acts, *23*, 266
COPYRIGHT,
assignment, *21*, 33
breach of confidence, *21*, 47
broadcasts, *21*, 46
conditions, *21*, 27
Copyright Act, 1956...*21*, 25, 41
Crown, *21*, 45
dramatic and musical performers, *21*, 45
education, *21*, 46
exceptions, *21*, 34
false attribution, *21*, 46
industrial designs, *21*, 43
infringement, *21*, 34, 37
licences, *21*, 33
ownership, *21*, 31
rights comprised in, *21*, 30
term, *21*, 29
tribunal, *21*, 38
CORPORATIONS,
contracts, *24*, 337
COSTS,
administration, *23*, 409
leases, *22*, 321
local authorities, *22*, 84
lump sum bill, *22*, 82
trustees, *22*, 228
COUNTY COURT,
mortgages, *21*, 385
COVENANT,
enlargement of leaseholds, *22*, 112
for quiet enjoyment, *22*, 231, **696**, **706**, **767**; *23*, **694**; *24*, 435
not to assign, *21*, **749**; *23*, 226, **694**
not to build, *22*, **699**
not to carry on trade, *22*, **765**
not to cause nuisance, *22*, **700**, **765**
not to hang washing, *22*, **699**
notice of breach, *24*, 78
running with land, *21*, 160
to build, *22*, **763**
to contribute towards costs, *22*, **700**
to convert house, *22*, **701**
to create company, *22*, **669**
to fence, *22*, **762**
to indemnify mortgagee, *22*, **682**
to insure, *22*, **695**
to keep underlessee indemnified, *22*, **767**
to lay drains, *22*, **764**
to maintain common parts, *22*, **696**
to maintain main walls, *22*, **700**
to make up roads, *22*, **764**
to observe covenants in head-lease, *22*, **767**
to pay calls, *22*, **682**
to pay costs of notices, *22*, **766**
to pay rates and taxes, *22*, **762**

[*Black figures indicate Precedents.*]

COVENANT—*cont.*
to pay rent, *22*, **762**
to permit entry, *22*, **765**
to permit shares to be revested, *22*, **682**
to procure covenants from successors, *22*, **700**
to repay loan, *22*, **680**, **684**
to supply hot water and maintain lift, *22*, **696**
to vote as directed, *22*, **682**
to yield up, *22*, **767**
waiver, *22*, 393
CROWN,
lease, *24*, 435
smoke abatement, *22*, 217
CUSTODIAN TRUSTEE,
office of, *24*, 196
CUSTOMS AND EXCISE,
Finance Act, 1957...*21*, 356
Finance Act, 1958...*22*, 348
Finance Act, 1960...*24*, 340

DAMAGES,
fatal accidents, *22*, 466
DEEDS,
delivery, *24*, 428
forgery, *23*, 412, 419
missing, *22*, **788**
DEPOSIT,
loss of, *22*, 258; *23*, 84, 154
payment to agent, *23*, 220
DISCLAIMER,
forfeiture, *23*, 140, 287
power of, *22*, **757**; *23*, **678**
DISCOVERY,
landlord and tenant, *23*, 483; *24*, 325, 326
DISCRETIONARY TRUSTS,
assignment, *21*, 61
bankruptcy, *21*, 61
bare powers and powers in nature of trust, *21*, 56
contractual rights, *21*, 57
control by court, *21*, 58
nature and purposes, *21*, 55
perpetuities, *21*, 63; *22*, 145
restriction, *23*, **681**
statutory, *21*, 63
DIVORCE AND MATRIMONIAL CAUSES,
income tax, *21*, 365
maintenance agreements, *21*, 348
matrimonial home, *21*, 125
variation of settlements, *23*, 308, 310; *24*, 322
DRAINS,
damage through non-maintenance, *23*, 476
drainage agreement, *23*, **698**
revocability of licence, *23*, 393

EASEMENTS,
drainage agreement, *23*, **698**
fire-escape, *23*, 2

EASEMENTS—*cont.*
light, *23*, 323; *24*, 424
ownership, *22*, 33
registered land, *21*, 471; *22*, 27
valuation, *23*, 214
wayleave, *23*, 477
ECCLESIASTICAL LAW,
option, *24*, 68
EDUCATION,
charities, *21*, 72
ELECTION,
gift of property in which testatrix had life interest, *21*, 69
subsequent disposition *inter vivos*, *21*, 70, 304
Wills Act, 1837...*21*, 152
ELECTRICITY,
valuation, *23*, 219
wayleaves, *23*, 477
ENLARGEMENT,
conditions, *22*, 101
conveyancing, *22*, 117
deed of enlargement, *22*, **790**
effect of, *22*, 106
enforceability of covenants, *22*, 112
incidents of term, *22*, 112
leaseholds, *22*, 81
registered land, *22*, 118
restrictions on alienation, *22*, 114
root of title, *22*, 117
stamp duty, *22*, 118
termination of interest, *22*, 116
EQUITABLE INTERESTS,
mere equities, *21*, 195
ESTATE AGENTS,
commission, *22*, 323; *23*, 305; *24*, 321
registration, *24*, 3
ESTATE DUTY,
assent where beneficiary to bear, *23*, **662**
commorientes, *22*, 310
contingent reversionary interest, *24*, 329
continuing annuity, *23*, 234
extra-statutory concessions, *23*, 82
Finance Act, 1957...*21*, 366
Finance Act, 1958...*22*, 364
Finance Act, 1959...*23*, 418
Finance Act, 1960...*24*, 354
foreign land, *23*, 232
foreign shares, *23*, 63
gift, disclaimer, *21*, 487
gift *inter vivos*, *21*, 366; *22*, 241
gift to holder of office, *22*, 309; *24*, 160
gift within five years, *21*, 5, 83
insurance policy, *21*, 246; *22*, 74, 366
interest in expectancy, *22*, 243, 367, 400
misrepresentation, *22*, 297
partnership share, *24*, 440
quick succession, *22*, 369
renunciation of bonus shares, *22*, 398

ESTATE DUTY—*cont.*
sale of land, *21*, 65
settlement on children, *22*, **737**
surrender of life interest, *22*, 398
survivorship, *24*, 161
valuation of assets, *23*, 70, 406
ESTOPPEL,
advertising sign, *21*, 312
recital, *22*, 140
EXCHANGE,
deed of exchange, *22*, **777**
EXECUTORS,
appointment of trustees after completion of administration, *21*, 390
cumulative or substitutional legacy, *21*, 391
dependants' claim under statute not assets, *21*, 481
legacies charged on lapsed share, *23*, 139
of tenant for life, sale by, *23*, 360; *24*, 43, 214
partial intestacy, *23*, 400
postal applications for grant, *23*, 242
revocation of grant, *21*, 75
trust corporation, *22*, 469

FAMILY ARRANGEMENT,
conversion of contingent interests, *24*, **666**
deed subject to obligation to devise, *21*, **749**
permission for unauthorised mortgage, *22*, **688**
release between members of company, *21*, **659**
FATAL ACCIDENTS,
damages, *22*, 466
insurance, *22*, 466
FINANCE ACT, 1957,
effect of, *21*, 356
FINANCE ACT, 1958,
effect of, *22*, 348
FINANCE ACT, 1959,
effect of, *23*, 414
FINANCE ACT, 1960,
effect of, *24*, 340
FIXTURES,
refrigerator, *22*, 231
removal, *24*, 369
FLATS,
agreement for sale for conversion, *22*, **698**
entry of easement on register, *21*, 471
income tax, *21*, 4, 80, 179, 364
lease, *21*, **671**; *22*, **695**; *23*, **689**; *24*, 450
partition, *23*, **749**
rating, *24*, 331
restrictive covenants, *21*, 6
road charges, *21*, 178, 256
sale, *24*, 450, 484
transfer, *24*, **743**

FORESTRY,
lease, *21*, 259, **698**
FORGERY,
prevention, *23*, 412, 429
FRAUD,
compulsory purchase, *21*, 455
conveyance, *23*, 134
FRIENDLY SOCIETIES,
registered land, *21*, 473
FURNISHED HOUSES,
premium, *23*, 323
rent recoverable, *23*, 227

GARAGES,
conveyance, *23*, **708**
GAS,
redevelopment, *21*, 394
GIFTS,
ante-nuptial settlement, *22*, 229
disclaimer, *21*, 487
investigation of title, *21*, 402
non-charitable bodies, *24*, 278
within five years, *21*, 5, 83

HIGHWAYS,
access, *23*, 476
acquisition of land, *23*, 454
adjoining landowners, *24*, 459
bridges and ferries, *23*, 168
building lines, *23*, 446
buildings in streets, *23*, 445
classification, *23*, 163
controls over adjoining land, *23*, 445
creation, *23*, 272, 276
diversion, *23*, 279
financial provisions, *23*, 171
highway authorities, *23*, 165; *24*, 465
improvement, *23*, 351, 447
maintenance, *23*, 346
new streets, *21*, 346; *22*, 120; *23*, 449
nuisance, *23*, 355
ownership, *23*, 169
private street works, *21*, 416; *23*, 306, 455
public right of way, *21*, 232, 302; *24*, 468
public utilities street works, *23*, 453
redevelopment, gas mains, *21*, 394
repair, *21*, 232; *22*, 64
restriction of ribbon development, *23*, 452
rights in, *24*, 454
road charges, flats, *21*, 178, 256
special roads, *23*, 278
statutory undertakers, *24*, 459
stopping up, *23*, 279
town and country planning, *23*, 452
trunk roads, *23*, 278
HIRE-PURCHASE,
discounting, *24*, **712**
HORTICULTURE,
Horticulture Act, 1960...*24*, 169

[*Black figures indicate Precedents.*]

HOSPITALS,
trust for prize fund for nurses, *22*, **708**
HOUSING,
associations, *23*, 3
business premises, *22*, 272
compensation for unfit houses, *22*, 264
discretionary payments, *22*, 273
improvement grants, *23*, 298
mortgaged property, *22*, 269
payments to owner-occupiers, *22*, 269
removal expenses, *22*, 274
review increasing rent, *22*, 232
underground rooms, *23*, 243
well-maintained payments, *22*, 265
HUSBAND AND WIFE,
advancement, *22*, 225; *23*, 221
maintenance agreements, *21*, 348
maintenance, income tax, *21*, 365
matrimonial home, *21*, 125; *22*, 141; *23*, 54, 136, 305, 479
title deeds, *22*, 226
wedding presents, *24*, 239

INCOME TAX,
assessment on leases, *22*, 411
benefit to employee, *22*, 154, 396; *24*, 158, 251, 441
bonus shares, *22*, 458
child allowance, *21*, 360
company, residence, *22*, 397
covenant to pay Schedule A tax, *23*, **692**
death of another, *22*, 72; *23*, 69
deductions from emoluments, *22*, 353
deposit account, *21*, 313
director, payments after death, *22*, 308
discretionary settlements, *22*, 360
earned income, *21*, 359
expenses of management, *21*, 484
Finance Act, 1957...*21*, 357
Finance Act, 1958...*22*, 349
Finance Act, 1959...*23*, 414
Finance Act, 1960...*24*, 341
flats, *21*, 4, 80, 179, 364
free of tax payments, *23*, 404
gift by shareholders, *21*, 81, 315
investment allowances, *23*, 416
long lease, *24*, 251
maintenance payments, *21*, 365
managing director, share option, *22*, 240
old age relief, *21*, 359, 361
overseas trade corporations, *21*, 378; *23*, 416
penalty, *23*, 68, 403
personal reliefs, *22*, 351
post-war credits, *23*, 243
premiums for pensions, *21*, 485
repairs, *21*, 173
residence of company, *24*, 158
revocable and determinable settlements, *22*, 357

INCOME TAX—*cont.*
reward for services, *23*, 67
settlement on children, *22*, 354, **737**; *24*, **688**
tax planning for solicitors, *22*, 250
transfer to non-resident, *22*, 153
valuation, *23*, 218
work in progress, *24*, 330
INFANTS,
courts' power to deal with interests, *21*, 448
deed of covenant for, *21*, 325
income tax, child allowance, *21*, 360
interests postponed after majority, *21*, 293
receipts, *23*, **679**
right to receive property, *21*, 72
service agreement, *21*, **734**
settlement, surtax, *21*, 244, 314
INSURANCE,
building contracts, *22*, 325
covenant as to, *22*, **695**; *23*, **694**, **695**
death duties, *21*, 246
declaration of trust, *23*, **659**
fatal accidents, *22*, 466
flats, *24*, 451
spread of fire, *21*, 92
INTESTACY,
issue of brothers and sisters, *22*, 3, 66
INVESTMENT,
charities, *24*, 244, 394
clause, *21*, 165; *22*, 467, **741**, **751**; *23*, 55, 59, **668**
trustee, *22*, 325

JOINT TENANCY,
statutory declaration that not severed, *21*, **691**

LAND,
meaning of, in administrative statutes, *21*, 141
price of, *24*, 449
LAND CHARGES,
mortgages, *22*, 54
notice and knowledge, *23*, 129
registered land, *23*, 117
searches, *21*, 89
time for, *21*, 403
LAND DRAINAGE,
deposit of materials on banks, *22*, 65
LANDLORD AND TENANT,
consent to assignment, *23*, 65
covenant not to assign, *21*, 239
dangerous premises, *21*, 343
discovery, *23*, 483; *24*, 325
fair wear and tear, *22*, 70, 92, 236; *23*, 63
forfeiture, *21*, 79; *23*, 140, 287
improvements, *22*, 264, **729**
notice to quit, *21*, 260, **729**; *23*, 140
order for possession, *24*, 510
refrigerator, *22*, 231
registered land, *22*, 18, 22, 31

[*Black figures indicate Precedents.*]

LANDLORD AND TENANT—*cont.*
repairs, *22*, 307, 392, 470
repudiation of landlord's title, *22*, 150; *23*, 140, 287
temporary provisions, *22*, 332
tenancy agreements and s. 146 of the Law of Property Act, 1925...*24*, 125
variable rents, *21*, 265
water rates, *24*, 439
LANDLORD AND TENANT ACT, 1954,
advertising signs, *23*, 142
amount of rent, *21*, 78; *22*, 152
breach clause, *22*, 148
breach of repairing covenant, *22*, 394
business conducted by manager, *22*, 471
commencement of new lease, *23*, 155, 231; *24*, 452
common law notices, *23*, 156
compensation, *23*, 11
competent landlord, *23*, 82, 143
date of expiry of tenancy, *21*, 77
demolition, *21*, 404; *22*, 239; *24*, 326, 520
intention to occupy, *21*, 77; *22*, 395; *23*, 229, 402, 480, 483
joint landlords, *21*, 169
lease to avoid, *21*, 257, **723**
licence to avoid, *22*, **771**; *24*, **738**
local authority, *23*, 228
members' club, *21*, 311; *22*, 69
mock auction, *22*, 471
naming wrong respondents, *22*, 306
notice to quit, *24*, 437
premises comprised in tenancy, *23*, 482
reconstruction, *21*, 168, 169, 371, 404; *22*, 71, 238; *23*, 66, 482
reversionary tenancy, *24*, 246
service of notice, *24*, 154, 326
signature of notice, *21*, 483
subtenancies, *23*, 412, 458; *24*, 451
surrender, *21*, **668**
tenancy at will, *21*, 78
use clauses, *23*, 1, 154
validity of notices, *24*, 168
LANDS CLAUSES ACTS,
application of compensation, *23*, 265
common lands, *23*, 266
conveyances, *23*, 265
copyholds, *23*, 266
entry on lands, *23*, 265
interests not purchased, *23*, 267
intersected lands, *23*, 266
leases, *23*, 267
mortgages, *23*, 266
notices, *23*, 268
penalties, *23*, 268
purchase by agreement, *23*, 263
purchase otherwise than by agreement, *23*, 263
superfluous land, *23*, 267
LAW OF PROPERTY ACT, 1925,
s. 56, benefit to person not named, *23*, 179
s. 146, tenancy agreements, *24*, 125
LEASE,
advertising signs, *21*, 312
agreement as to terms, *24*, 257
assignment by mortgagee, *21*, **738**
avoiding Landlord and Tenant Act, 1954...*21*, 257, **723**
contingent, *24*, 465
costs, *22*, 321
covenant not to assign, *21*, **749**
decontrolled premises, *22*, **653**
flat, *21*, **671**; *22*, **695**; *23*, **689**
forestry, *21*, 259, **698**
income tax, *22*, 411; *24*, 251
Lands Clauses Acts, *23*, 267
lease stone, *24*, 258
licence or, *22*, 69; *24*, 246
registered land, *21*, 474; *23*, 120
reversionary, *24*, 462
sale by way of, *23*, 301
stamp duty, *22*, 167
standard clauses, *22*, 249, 326, **760**
use classes, *23*, 1, 154
LEASEHOLD,
capital and income, *21*, 307
implied assent, *21*, 167
LEASEHOLD PROPERTY (REPAIRS) ACT, 1938,
assignment, *21*, 392
mortgagee, *21*, 79
LEGITIMACY,
Legitimacy Act, 1959...*23*, 325
LETTERS OF CREDIT,
right to stop, *22*, 159
LICENCE,
construction of drain, *23*, 393
lease or, *22*, 69; *24*, 246
parking of caravan, *21*, **707**
registered land, *22*, 27
to avoid Landlord and Tenant Act, 1954...*22*, **771**; *24*, **738**
LIGHT,
offices, *24*, 424
Rights of Light Act, 1959...*23*, 323
LIMITATION OF ACTIONS,
adverse possession, *22*, 63
registered land, *21*, 384
trustee, *22*, 390
LOANS,
borrowing control, *23*, 81
secured by deposit of shares, *21*, **712**
LOCAL AUTHORITIES,
charities, *24*, 405
costs on sales to, *22*, 84
land transactions, *23*, 96, 340
LONDON,
smoke abatement, *22*, 216
LUNACY,
settlement of patient's property, *24*, 152

[*Black figures indicate Precedents.*]

MAINTENANCE,
agreements, *21*, 348
income tax, *21*, 365
power of, *23*, **675**
MARKETS,
disturbance, *23*, 307
MATRIMONIAL PROCEEDINGS,
children, *22*, 323
property and maintenance, *22*, 383
MEDICAL PARTNERSHIPS,
division of patients, *21*, 53
drafting of deeds, *21*, 49
partner outside service, *21*, 52
payment for assets other than goodwill, *21*, 51
restrictions on practice, *21*, 54
sale of goodwill, *21*, 50
superannuation, *21*, 53
MEDICINE,
nurses, trust for prize fund for, *22*, **708**
MENTAL DEFICIENCY,
settlement of patient's property, *24*, 152
MERGER,
rentcharges, *24*, 375
MINING LAW,
miners' welfare, *23*, 18, 365
quarrying agreement, *22*, **723**
MISREPRESENTATION,
statement of opinion, *22*, 297
MORTGAGES,
alternative methods of payment, *21*, **756**
assignment by mortgagee, *21*, **738**
attornment clause, *22*, 307
auctioneer instructed by mortgagee, *21*, 68
business and policy, *24*, **654**
by builder, *22*, **712**
companies registration, *22*, 55
conveyance where uncompleted sales, *23*, 85, **654**
deed of enlargement, *22*, **790**
equity, *24*, 507
housing, *22*, 269
husband and wife, *23*, 136
land charges registration, *22*, 54
Lands Clauses Acts, *23*, 266
Leasehold Property (Repairs) Act, 1938...*21*, 79
leasing powers, *24*, 237
loan secured by blank transfer, *21*, **712**
local authority, *24*, 69
permission for unauthorised mortgage, *22*, **684**
policy, *23*, **765**
possession, *21*, 68, 229, 230, 385, 386, 488
power of sale, *23*, 138
priorities, *22*, 56
registered land, *22*, 22, 31
release of estate, *24*, **685**
MORTGAGES—*cont.*
release of surety, *22*, **654**
rent restriction, *22*, 87, 149
sale conditional on, *23*, 302
sale of mortgage debt, *22*, **651**
second charge deferring payment of interest, *21*, **686**
shares, *22*, **679**, **684**; *23*, **761**
stamp duty, *22*, 53
substituted security, *22*, **781**; *24*, **759**
subrogation, *24*, 431
tacking, *22*, 44
MORTMAIN,
abolition, *24*, 421

NAME AND ARMS CLAUSE,
uncertainty, *24*, 323
NATIONAL INSURANCE,
pension schemes, *24*, 92, **675**
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE,
rights of way, *21*, 232, 302
NEGLIGENCE,
occupiers' liability, *21*, 340; *22*, 402
solicitor, *21*, 177, 248, 326, 397
NEW STREETS,
architect's liability, *22*, 120
New Streets Act, 1951 (Amendment) Act, 1957...*21*, 346
orders, *23*, 449
NEW TRUSTEES,
power to appoint, *22*, **744**
NOTICE TO QUIT,
agricultural holdings, *22*, 305, 306; *24*, 26, 434
common law notices and business tenancies, *23*, 156
increase of rent, *22*, 232
NUISANCE,
highways, *23*, 355
smoke abatement, *22*, 214
NURSES,
trust for prize fund for, *22*, **708**

OFFICES,
health, safety and welfare, *24*, 338
light, *24*, 424
OPTION TO DETERMINE,
business tenancies, *23*, 157
OPTION TO PURCHASE,
assignment, *21*, 482
companies, *22*, **783**; *23*, **715**
ecclesiastical law, *24*, 68
failure to register, *24*, 328
on default in payment, *23*, **688**
statutory tenancy, *24*, 437
OPTION TO RENEW,
assignment, *24*, 250
holding over, *24*, 438
perpetuities, *24*, 327
OWNERSHIP,
meaning of, *22*, 33

[*Black figures indicate Precedents.*]

PARTITION,
registered flats, *23*, **749**
shares, *24*, **737**
PARTNERSHIP,
estate duty, *24*, 440
PARTY WALLS,
declaration, *22*, **701**
PATENTS,
agreement for marketing products, *22*, **657**
PENSIONS,
national insurance, *24*, 92
scheme, *23*, **715**; *24*, 165, **675**
PERPETUITIES,
accumulations, *21*, 295
advancement, *22*, 300; *23*, 396, 423
charities, *24*, 153
determinable interests, *21*, 213
discretionary trusts, *21*, 63; *22*, 145
law reform, *21*, 2
lease, *24*, 327
PERSONAL REPRESENTATIVES,
contract for sale by, *22*, 83
office of, assignability of, *22*, 469
PETROLEUM,
sales agreement, *22*, 324
PLANNING. *See* TOWN AND COUNTRY PLANNING.
PLANS,
registered land, *23*, 110
POWER OF APPOINTMENT,
hybrid power, *22*, 298
residuary gift, *21*, 233; *22*, 67
Scottish will, *22*, 144
special power, *21*, 305
POWER OF ATTORNEY,
mortgage of shares, *22*, **681**
to execute conveyance, *22*, **722**
PRELIMINARY INQUIRIES,
form of, *21*, 255
repetition as requisitions, *23*, 153
PREMIUMS,
lease of flat, *23*, **689**
sale at undervalue, *24*, 156
PRIORITY NOTICES,
national conditions of sale, *23*, 304
PRIVATE STREET WORKS,
adoption of street, *21*, 425
contribution and apportionment, *21*, 418
enforcement of liability, *21*, 424
final apportionment, *21*, 424
greater hardship, *21*, 432
Highways Act, 1959...*23*, 455
improvements, *21*, 431
making up in stages, *21*, 418
objectors, *21*, 419
Public Health Act, 1875...*21*, 416
sewering, *21*, 421
street widening, *21*, 417
PROBATE,
administration scale costs, *23*, 409
PROFITS TAX,
bonus shares, *22*, 463
PROFITS TAX—*cont.*
Finance Act, 1958...*22*, 362
Finance Act, 1959...*23*, 417
trading loss, *21*, 246
PROTECTIVE TRUSTS,
bankruptcy, *21*, 110
forfeiture, *22*, 227
variation of settlement, *22*, 302
PUBLIC AUTHORITIES,
judicial control, *21*, 202
PUBLIC HEALTH,
smoke control, *22*, 210
PURCHASE-MONEY,
unpaid, liability of devisee for, *22*, 304
PURCHASE TAX,
Finance Act, 1957...*21*, 357
Finance Act, 1958...*22*, 348

QUARRIES,
agreement, *22*, **723**
QUIET ENJOYMENT,
covenant for, *22*, 231, **696**, **706**, **707**; *23*, **694**; *24*, 435

RAILWAYS,
lease of wayleave rights, *22*, **703**
repair of highways, *21*, 232; *22*, 64
right of way, *21*, 302
RATES,
covenant to pay, *23*, **692**, **695**
water rates, *24*, 439
RATING,
charities, *24*, 74
flats, *24*, 331
golf course, *24*, 331
postponement of new lists, *23*, 243
Rating and Valuation Act, 1957...*21*, 254
rent restriction, *22*, 234
RECITALS,
administration of estate, *22*, **746**
advances, *22*, **746**
agreement for exchange, *22*, **778**
agreement for loan, *22*, **680**, **684**
agreement for release, *24*, **771**
agreement for sale, *24*, **778**
agreement for sale and apportionment of purchase money, *24*, **774**
assignment of part of premises, *24*, **777**
by-law approval, *21*, **651**
certificate as to duty, *24*, **770**
consent to lease of wayleave rights, *22*, **704**
consideration for settlement, *23*, **687**
construction of siding, *22*, **703**
conveyance, *22*, **777**; *23*, **687**
death and probate, *22*, **746**
deed of enlargement, *24*, **777**
deposit of certificates, *22*, **680**
desire to divide, *24*, **769**
devolution of lease, *24*, **777**
existing wayleave rights, *22*, **704**

[*Black figures indicate Precedents.*]

RECITALS—*cont.*
intention to create building scheme, *23*, **690**
lease, *24*, **776**
legal charges, *21*, **656**
loss of lease, *24*, **777**
mortgage, *22*, **777**
planning permission, *21*, **651**
settlor's present children, *22*, **738**
state of mortgage debt, *22*, **778**
suretyship, *21*, **656**
surviving children, *22*, **746**
title, *21*, **651**, **656**, **744**; *22*, 140, **679**, **703**; *23*, **685**, **769**, **772**
transfer of investments, *22*, **684**, **738**
valuation, *22*, **746**; *24*, **770**
will, *22*, **745**
RECTIFICATION,
covenant in lease, *22*, 393
RE-ENTRY,
proviso for, *23*, **696**
REGISTERED LAND,
absolute leasehold title, *23*, 122; *24*, 86
acknowledgment for production, *23*, 115
address of registry, *21*, 328; *22*, 166, 410; *24*, 85, 453
adjudication of stamp duty, *21*, 476
agreements for leases, *22*, 18, 22
appurtenances, *23*, 114
bare trusts, *22*, 24
boundaries, *21*, 162, 477
building estates, *23*, 321
cancellation of notice of control of sale, *21*, 473
cancellation of notice of unregistered rentcharge, *24*, **753**
charge by way of substituted security of rentcharge, *24*, **759**
companies, *23*, 118
compulsory areas, *21*, 92, 328; *22*, 3; *23*, 241
developing building estates, *23*, 111; *24*, 338
easements, *21*, 471
enlargement of leaseholds, *22*, 118
equitable easements and profits *à prendre*, *22*, 27
equitable interests, *22*, 14
equitable licences, *22*, 27
equitable mortgages, *22*, 22, 31
extinguishment of rentcharge, *24*, 375
first registration, *21*, 90
flats, *21*, 460; *24*, 484
forms of instruments, *23*, 113
grant of rentcharge, *24*, **733**, **763**
grant of right of way, *24*, **670**
identity of property, *23*, 330
indemnity covenants, *21*, 472
inefficiency of registered conveyancing, *22*, 319
joint proprietors, *23*, 114
land charges, *23*, 117
REGISTERED LAND—*cont.*
leases, *21*, 474; *23*, 126; *24*, 495
notice and knowledge, *22*, 129
overriding interests, *21*, 385; *22*, 18
partition of block of flats, *23*, **749**
personal searches, *23*, 116
photographic copies, *22*, 83
plans, *23*, 110; *24*, 85
positive covenants, *21*, 472
possession under trusts, *22*, 19
post-registration of dispositionary leases, *23*, 120
public index map, *23*, 119
rentcharges, *23*, 125; *24*, 8, 101, 211, 259, 375
reports, *21*, 401; *22*, 409; *24*, 452
restrictive covenants, *21*, 470
searches on behalf of purchaser and chargee, *21*, 475
settled land and trusts for sale, *22*, 22
sub-sales and resales, *21*, 469
time for searches, *21*, 403
title shown procedure, *23*, 326
transfer in consideration of rentcharge, *24*, **699**, **707**, **754**
transfer of flat, *24*, **743**
transfer of rentcharge, *24*, **730–732**
transfer subject to rentcharge, *24*, **703**, **705**, **711**, **761**, **766**, **768**
RELEASE,
executors, *22*, **747**
mortgagee, *24*, **685**
one of several sureties, *21*, **656**
rentcharge, *24*, 375
remainder by tenant for life, *23*, **759**
trustees, *24*, **769**
RENT,
agricultural holdings, *24*, 179
covenant to pay, *23*, **692**
variable, *23*, **707**; *24*, **665**
RENT RESTRICTION,
abatement for disrepair, *22*, 5
adjustments in respect of services and furniture, *21*, 429, **727**, **728**
agreement as to rateable value, *21*, **732**
agreement giving security of tenure, *21*, **726**
alternative accommodation, *21*, 299, **725**
application for certificate of disrepair, *22*, 7
arrears of rent, *22*, 68, 159
breach of undertaking, *22*, 11
business premises, *22*, 235; *23*, 141
cancellation of certificate of disrepair, *22*, 10
certificate of disrepair, *22*, 8
charge of parties, *22*, 13
dates under Rent Act, 1957...*21*, 253
death of tenant, *21*, 240, 481
decontrol, *21*, 262; *23*, 231, 484

RENT RESTRICTION—*cont.*
existing certificates of disrepair, *22*, 12
false evidence, *21*, 241
fitness for habitation, *21*, 393
furnished premises, *21*, 242, 243
furniture and fittings, *23*, 323
greater hardship, *21*, 330; *22*, 237
house required for daughter, *22*, 238
improvements, *21*, 430
internal decorative disrepair, *21*, 331
landlord by purchase, *21*, 329
landlord's undertakings, *22*, 6, 7
lease of decontrolled premises, *22*, **653**
local authority's proposal notice, *22*, 7
mortgages, *22*, 87
notice of increase, *21*, 337
notice to quit, *22*, 307
order for possession in absence of tenant, *21*, 241
premium, *22*, 98, 149, 233, 396; *23*, 401; *24*, 156
private street works, *21*, 431
rateable value, *22*, 234
rates, *21*, 427
Rent Act, 1957...*21*, 260, 329; *22*, 252
rent less than two-thirds rateable value, *21*, 167
rent limits, *21*, 261, 332, 427, **732**; *22*, 236; *23*, 63
repairs, *22*, 70
restrictions on possession, *22*, 336
service tenancy, *21*, 76
subtenancies, *22*, 12; *24*, 247
surrender, *23*, 144
suspension orders, *22*, 341
temporary provisions, *22*, 332
tenancy granted by beneficiary, *22*, 67
tenant's defects notice, *22*, 5
withdrawal of proposal notice, *22*, 83, 319
RENTCHARGES,
adverse possession, *24*, 382
cancellation, *24*, **753**
charge by way of substituted security, *24*, **759**
extinguishment, *24*, 375
grant of, *24*, **733**, **763**
merger, *24*, 376
redemption, *24*, 378
re-entry, *24*, 380
registered land, *23*, 125; *24*, 8, 101, 211, 259, 375
release, *24*, 375
restrictive covenants, *24*, 388
transfer in consideration of, *24*, **699**, **707**, **754**
transfer of, *24*, **730–732**
transfer subject to, *24*, **703**, **705**, **711**, **761**, **766**, **768**
war damage, *24*, 386
REPAIRS,
agricultural holdings, *24*, 288
covenant as to, *23*, **693**, **694**
demolition, *24*, 157
diminution of value of reversion, *24*, 248
leave to proceed, *23*, 64
structural repairs, *23*, 83, 144, 311
weekly tenancy, *23*, 484
windows, *23*, 83, 144
REQUISITIONING,
Crown lease, *24*, 435
Requisitioned Houses Act, 1960...*24*, 166
REQUISITIONS,
preliminary inquiries repeated as, *23*, 153
RESCISSION,
right of, *24*, 58
RESTRICTIVE COVENANTS,
alcohol, *21*, 13
annexation of benefit, *21*, 386
change of user, *21*, 12, 13
churches and church halls, *21*, 16
compensation not awarded by tribunal, *21*, 10
costs, *21*, 17, 387
court or tribunal, *21*, 18
crowds, *21*, 14
declaration that land no longer affected, *21*, 231
density, *21*, 13
discharge, *21*, 6
discretion of tribunal, *21*, 8
extinguishment of rentcharge, *24*, 388
flats, *21*, 6
modification, *21*, 6, 479
mental defectives, *21*, 15
national conditions of sale, *23*, 304
new construction, *21*, 12
noises, *21*, 14
notices, *21*, 20, 22
objectors, *21*, 20, 387
ownership, *22*, 33
planning, *21*, 23
proposed user not causing disturbance, *21*, 16
registered land, *21*, 470
smells, *21*, 14
temporary modification, *21*, 9
RESTRICTIVE PRACTICES,
notice of condition, *21*, 249; *22*, 404
RESULTING TRUST,
charities, *22*, 145
surtax, settlement on children, *21*, 244
RETIREMENT BENEFITS,
annual premium contracts, *21*, 118
Law Society, *21*, 1
return of premiums, *21*, 119
reversionary annuities, *21*, 118
self-employed, *21*, 117
single premium contracts, *21*, **118**
with profit contracts, *21*, 117

RIBBON DEVELOPMENT,
restriction of, *23*, 452
RIGHT OF WAY,
mutual grant, *24*, **725**
public, *21*, 232, 302
registered land, *24*, **669**
way of necessity, *24*, 205
ROAD CHARGES,
flats, *21*, 178, 256

SALE OF GOODS,
memorandum, *22*, 137
SCHOOL SITES,
reverter, *24*, 319
SEARCHES,
registered lands, *23*, 116
SERVICE AGREEMENT,
managing director, *21*, **752**
SETTLED LAND,
permission for unauthorised mortgage, *22*, **688**
power of advancement, *22*, **776**
registered land, *22*, 22
sale by executor of tenant for life, *23*, 360; *24*, 43, 314
SETTLEMENTS,
Bahamian settlement, *23*, 198, **666**
children, *22*, **737**; *24*, **688**
consent of protector, *23*, **683**
educational policies, *24*, **672**
grandchildren, *21*, **772**
income of shares, *24*, **779, 784**
income under invalid settlement, *23*, **746**
lunacy, *24*, 152
on trusts of existing settlement, *21*, **743**
revocable, *22*, 221
standard clauses, *22*, 387, **750**
surtax, *21*, 244, 314
variation, *22*, 229, 302, 389; *23*, 308, 310
SMOKE ABATEMENT,
clean air, *22*, 210
SOLICITORS,
agreement to employ assistant, *23*, **651**
charging clause, *22*, **743**; *23*, 60, 399
conveyancing costs, *21*, 93
High Court costs, *24*, 5
maintenance proceedings, *22*, 250
tax planning, *22*, 250
wills, duty as to, *21*, 177, 248, 326, 397; *23*, 225
SPECIFIC PERFORMANCE,
absence of written evidence, *24*, 55
costs, *23*, 392
delay, *21*, 66; *24*, 149
misdescription, *21*, 67
STAMP DUTIES,
adjudication, registered land, *21*, 476
agreement not to sell except with vacant possession, *22*, 663
companies, *21*, 172

STAMP DUTIES—*cont.*
conveyances, *22*, 167, 218, 244
deed of family arrangement, *24*, 666
discounting of hire-purchase, *24*, 712
enlargement of leaseholds, *22*, 118
Finance Act, 1958...*22*, 372
Finance Act, 1959...*23*, 417
leases, *22*, 167
mortgages, *22*, 53
option to purchase, *23*, 715
oral direction to trustees, *22*, 157, 311
purchase of reversion, *22*, 156, 312
securing immediate benefit from reductions, *22*, 224
STATUTE OF FRAUDS,
goods or land, *22*, 137
joinder of documents, *22*, 275
sale of land, *22*, 61
trusts of equitable interests in personalty, *22*, 141, 301
STATUTORY DECLARATION,
in support of deed of enlargement, *22*, **792**
missing title deeds, *22*, **788**
no severance of joint tenancy, *21*, **691**
SURRENDER,
agricultural holdings, *24*, 371
current tenancy, *21*, **668**
life interest, *22*, 398
remainder, *23*, **759**
SURTAX,
bonus shares, *21*, 245; *22*, 464
directions, *21*, 327; *23*, 405
Finance Act, 1957...*21*, 362
Finance Act, 1959...*23*, 414
investment company, *21*, 171; *22*, 155
release of power of revocation, *22*, 73
settlement on children, *21*, 244, 314, 486; *22*, **737**; *24*, **688**

TENANT FOR LIFE,
sale by executor of, *23*, 360; *24*, 43, 314
surrender of remainder, *23*, **759**
TITHES,
Tithe Redemption Office, *24*, 168
TITLE DEEDS,
missing, *22*, **788**
TOWN AND COUNTRY PLANNING,
alternative development, *23*, 93
compensation, *21*, 388; *22*, 177
comprehensive development, *23*, 93
conditional permission, *23*, 485
consultation with planning authority before purchase, *24*, 257
contravening development, *22*, 178
declaration as to need for permission, *22*, 313; *23*, 486
development charge, *23*, 71
development value, *22*, 76
enforcement notice, *21*, 174, 180, 248, 395; *22*, 75, 314, 452; *23*, 72, 235, 343, 408; *24*, 253, 443
existing permissions, *22*, 179

[*Black figures indicate Precedents.*]

TOWN AND COUNTRY PLANNING—*cont.*
highways, *23*, 452
increase in number of caravans, *23*, 236
injunction, *22*, 315
inquiry as to amenity, *23*, 407
obligation to purchase, *23*, 100, 344
operational land of statutory undertakers, *21*, 395
planning applications, *23*, 99, 341
planning blight by road schemes, *24*, 1, 336
protection notices, *22*, 177
purchase notices, *23*, 72, 99, 341; *24*, 443
refusal, whether equivalent to acquisition, *24*, 252
restrictive covenants, *21*, 23
resumption of permitted use, *22*, 314
sale of caravans, *24*, 442
temporary buildings, *23*, 72
valuation, *23*, 216
withdrawal of permission, *21*, 394
TRESPASS,
advertising sign, *21*, 312
TRUST,
agreement to convey beneficial interest, *24*, 70
courts' power to deal with interest of infants, *21*, 448
creation of equitable interests in personalty, *22*, 141, 301
following trust moneys, *22*, 390; *23*, 55
for paying debts, *21*, 280
complied, *23*, 310
uncertainty, *21*, 71, 303, 306
variation, *22*, 373; *23*, 221, 310, 398, 478; *24*, 2, 71, 72, 151, 242, 432, 433
writing, *24*, 69
TRUST CORPORATION,
executor, *22*, 469
TRUST FOR SALE,
conveyance on, *23*, **685**
discretion to order sale, *24*, 240
registered land, *22*, 22
TRUSTEE,
appointment of new, *23*, **680**, **686**, **689**
control of powers, *23*, **681**
costs, *22*, 228
custodian trustee, *24*, 196
delegation, *23*, 396, 423
proceedings by, *24*, 72
remuneration, *22*, **757**; *23*, **679**
vendor and purchaser, *23*, 173

UNDUE INFLUENCE,
wills, *23*, 61

VALUATION,
easements, *23*, 214
electricity supply, *23*, 219
freeholds, *23*, 206
VALUATION—*cont.*
leaseholds, *23*, 208
local Acts, *23*, 217
new buildings, *23*, 219
plant and machinery, *23*, 218
Schedule A tax, *23*, 218
town and country planning, *23*, 216
underleases, *23*, 211
war damage, *23*, 219
years' purchase, *23*, 204
VENDOR AND PURCHASER,
loss of deposit, *23*, 84, 154
reletting, *23*, 134
vendor as trustee, *23*, 173

WAGES,
payment, *24*, 337
WAR DAMAGE,
builders' estimate, *21*, 396
rentcharges, *24*, 386
valuation, *23*, 219
WATER,
sale of flats, *24*, 450
WAYLEAVES,
lease of rights as to siding, *22*, **703**
WILLS,
absolute gift, *21*, 166, 220; *23*, 62
acceleration, *21*, 308, 480
accruer, *21*, 74, 224
ademption, *21*, 70, 73
adoption, *21*, 237, 391
attesting witness, *23*, 60, 399
business, bequest of, *22*, 229
businessman, of, *24*, **734**
charging clause, *23*, 60, 399
class gifts, *21*, 237, 391
commorientes, *22*, 1
condition precedent, time not of the essence, *23*, 225
construction by probate court, *22*, 148
continuance of service tenancy, *24*, **725**
cumulative or substitutional gifts, *21*, 391; *23*, 399
dependent relative revocation, *24*, 324
general power, residuary bequest, *22*, 67
gift to brothers in enemy territory, *21*, **741**
gift to children and their children, *21*, **693**
interests postponed after majority, *21*, 293
intestate successors, *21*, 306
joint charge on several properties, *22*, 469
liability for unpaid purchase-money, *22*, 304
legacies charged on lapsed share, *23*, 139
omission, *21*, 308
partial intestacy, *23*, 400

[*Black figures indicate Precedents.*]

WILLS—*cont.*
partial revocation, *23*, 103
payment to servant, *22*, **694**
postponement till 25...*21*, **715**
providing for wife and daughter, *24*, **661**
residence for wife, *24*, **722**
shares, bequest of, *21*, 70
WILLS—*cont.*
signature, *22*, 303; *24*, 245
soldiers', **22**, 302
solicitor's duty, *21*, 177, 248, 326, 397; *23*, 225
survivorship, *24*, 74, 75
attached sheets, *24*, 325
undue influence, *23*, 61

[*Black figures indicate Precedents.*]

THE CONVEYANCER & PROPERTY LAWYER

Vol. 24, No. 1 January–February 1960

EDITORS

MAGAZINE:
EDWARD F. GEORGE, LL.B.,
Solicitor of the Supreme Court

PRECEDENTS:
ERNEST H. SCAMELL, LL.M.,
of Lincoln's Inn, Barrister-at-Law

ARTICLES

CONVEYANCER'S NOTEBOOK 1

RENTCHARGES IN REGISTERED CONVEYANCING—I
Theodore B. F. Ruoff 8

THE MODERN LAW OF AGRICULTURAL HOLDINGS—I J. Muir Watt 26

SALE BY THE EXECUTOR OF A TENANT FOR LIFE OF SETTLED LAND
Sir Lancelot Elphinstone 43

CONVERSION UNDER A CONTRACT FOR THE SALE OF LAND
Philip H. Pettit 47

NOTES OF RECENT CASES 68

LIBRARY 80

PRECEDENTS

See List Overleaf

SWEET & MAXWELL

PRECEDENTS

Conveyance by joint tenants one of whom became a bankrupt after contract but before completion, his trustee in bankruptcy joining in 651

Mortgage by a trader of his business premises and goodwill together with an insurance policy on his life with provisions for repayment by instalments 654

Will of Testator providing for his wife and for a daughter who is not over careful with money 661

Variable rent clause 665

TABLE OF CASES NOTED

Allen's Settlement, *Re*, 71
Caunter's Charge, *Re*, Bishop *v.* Southgate Corporation, 69
Clitheroe's Settlement Trusts, *Re*, 72
Cohen, *Re*, 76
Douglas's Will Trusts, *Re*, Lloyd's Bank *v.* Nelson, 75
Endacott, *Re*, 73
Gladstone *v.* Bower, 77
Grey *v.* I. R. C., 69
Krawitz Will Trusts, *Re*, 74
Moritz, decd., *Re*, Midland Bank Executor and Trustee Co. *v.* Forbes and Others, 72
Oughtred *v.* I. R. C., 70
Royal College of Nursing *v.* St. Marylebone Borough Council, 74
St. Swithin's, Norwich, *Re*, 68
Silvester *v.* Ostrowska, 78

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Six Parts a Year. Parts 12s. 6d. each. Subscription for 1960 £2 10s. post free.